

Exhibit B

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 Case No.
8 1:17-MD-2804
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10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO: "Case Track Seven") Polster

12 THURSDAY, NOVEMBER 3, 2022

13 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
14 CONFIDENTIALITY REVIEW

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16 Remote videotaped deposition of
17 Cameron McNamee, held at the location of the
18 witness in Columbus, Ohio, commencing at
19 9:03 a.m. Eastern Time, on the above date,
20 before Carrie A. Campbell, Registered
21 Diplomat Reporter, Certified Realtime
22 Reporter, Illinois, California & Texas
23 Certified Shorthand Reporter, Missouri,
24 Kansas, Louisiana & New Jersey Certified
25 Court Reporter.

- - -

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3 Golkow Litigation Services

4 TRIAL TECHNICIAN:
5 GINA VELDMAN,
6 Precision Trial Solutions

7 - - -

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1 VIDEOGRAPHER: We are now on
2 the record. My name is Judy Diaz.
3 I'm a legal videographer for Golkow
4 Litigation Services.

5 Today's date is November 3,
6 2022, and the time is 9:03 a.m.

7 This remote video deposition is
8 being held in the matter of opioid
9 litigation, Track 7 cases.

10 The deponent is Cameron
11 McNamee.

12 All parties to this deposition
13 are appearing remotely and have agreed
14 to the witness being sworn in
15 remotely.

16 All counsel will be noted on
17 the stenographic record.

18 The court reporter is Carrie
19 Campbell who will now swear in the
20 witness.

21
22 CAMERON MCNAMEE,
23 of lawful age, having been first duly sworn
24 to tell the truth, the whole truth and
25 nothing but the truth, deposes and says on

1 behalf of the Plaintiffs, as follows:

2

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. ELSNER:

5 Q. Good morning, Mr. McNamee. I'm
6 Michael Elsner. I'm from the law firm of
7 Motley Rice, and I represent Montgomery
8 County.

9 How are you this morning?

10 A. I'm good.

11 Q. Great.

12 Can we start with having you
13 state your name for the record?

14 A. Sure.

15 My name is Cameron McNamee.

16 Q. And, Mr. McNamee, where do you
17 live?

18 MR. APPEL: Mr. Elsner, would
19 you like me to make an appearance
20 representing Mr. McNamee?

21 MR. ELSNER: Sure, that's fine.
22 I thought all the appearances were
23 just going to be noted on the
24 stenographic record. But, of course.

25 MR. APPEL: I just don't know

1 if it was noted. Henry Appel,
2 principal Assistant Attorney General
3 with the Ohio Attorney General's
4 Office, 30 East Broad Street, 26th
5 Floor, Columbus, Ohio 43215. I'm
6 representing the State of Ohio Board
7 of Pharmacy and Cameron McNamee.

8 QUESTIONS BY MR. ELSNER:

9 Q. Thank you.
10 Mr. McNamee, where do you live,
11 sir?

12 A. I live in Columbus, Ohio.

13 Q. All right. And where do you
14 work?

15 A. I work at the State of Ohio
16 Board of Pharmacy.

17 Q. Okay. And how long have you
18 worked at the Ohio Board of Pharmacy?

19 A. Since November of 2013.

20 Q. And what is your position with
21 the Ohio Board of Pharmacy?

22 A. Currently serve as the director
23 of policy and communication.

24 Q. Okay. And have you served in
25 that role since you joined the board in

1 November of 2013?

2 A. Yes. Although I was
3 promoted -- I initially started as the
4 legislative liaison, but my job duties were
5 essentially the same, but I was promoted a
6 couple of years into my position to the
7 director of -- {audio interruption}.

8 Q. We lost your audio,
9 Mr. McNamee.

10 A. Oh, I'm sorry.
11 Yes. So I did, I started at
12 the legislative liaison and was promoted to
13 the director of policy and communications, I
14 believe, in 2016.

15 Q. All right. And can you
16 describe for us what your duties and
17 responsibilities are as the director of
18 policy and communications for the Ohio Board
19 of Pharmacy?

20 A. Sure.
21 So I'm responsible for all
22 legislative activity of the board. I'm also
23 responsible for managing external
24 communications and stakeholder relations, and
25 I'm also primarily responsible for drafting

1 and shepherding rules through the legislative
2 process.

3 Q. And before you joined the Ohio
4 Board of Pharmacy, where did you work, sir?

5 A. I worked at the Ohio Department
6 of Health.

7 Q. And what were your -- what was
8 your position at the Ohio Department of
9 Health?

10 A. I was an injury policy
11 specialist, so I worked in the violence and
12 injury prevention program, specifically on
13 policies related to preventing injury and
14 including drug overdose.

15 Q. All right. And can you
16 describe for us your educational background?

17 A. Sure.

18 I have a bachelor's in
19 government from Georgetown University and a
20 master's in public policy from Georgetown
21 University.

22 Q. Okay. Have you ever testified
23 before, Mr. McNamee?

24 A. Yes, in a deposition.

25 Q. Okay. Have you otherwise

1 testified before governmental bodies and
2 institutions?

3 A. Yes, before the legislature.

4 Q. For the Ohio legislature?

5 A. Yes.

6 (McNamee Exhibit 1 marked for
7 identification.)

8 QUESTIONS BY MR. ELSNER:

9 Q. Okay. I'm going to mark as
10 Exhibit 1 MR 4245, and we'll display that on
11 the screen. This will be Exhibit 1.

12 Mr. McNamee, have you seen this
13 document before, sir?

14 A. Yes.

15 Q. Okay. This is the notice for
16 the deposition today.

17 And if we turn through the
18 notice, it lists particular topics upon which
19 you're going to offer testimony today.

20 Have you reviewed those topics?

21 A. Yes.

22 Q. Okay. And are you prepared
23 today to offer testimony on the Ohio -- on
24 behalf of the Ohio Board of Pharmacy related
25 to the topics in this notice?

1 A. Yes.

2 Q. Okay. And to do that, did you
3 spend some time preparing to offer this
4 testimony today, learning what is contained
5 in these topics so that you could present a
6 fulsome picture of what the Ohio Board of
7 Pharmacy knows with respect to these topics?

8 A. Yes.

9 Q. Thank you.
10 Did you bring any documents
11 today to the deposition to have before you
12 while you were testifying?

13 A. No.

14 Q. Okay. All right. Mr. McNamee,
15 let's start with, could you tell us, what is
16 the Ohio Board of Pharmacy?

17 You can take this down, Gina.

18 A. Sure.

19 So we're the single state
20 agency responsible for regulating the
21 practice of pharmacy as well as the
22 distribution of dangerous drugs. We're also
23 responsible for conducting investigations
24 into criminal violations related to Ohio's
25 drug laws of 2925. I also manage the state's

1 Controlled Substances Act, including all of
2 the drug schedules.

3 Q. Is it true that the Ohio Board
4 of Pharmacy was established by the Ohio
5 legislature in 1884?

6 A. Yes.

7 MR. HYNES: Objection.

8 QUESTIONS BY MR. ELSNER:

9 Q. I'm sorry, can you repeat the
10 answer?

11 A. Yes.

12 Q. Okay. And, Mr. McNamee, who
13 appoints the members of the Ohio Board of
14 Pharmacy?

15 A. The governor and then the
16 Senate confirms.

17 Q. Okay. And is the Ohio Board of
18 Pharmacy responsible for regulating the
19 practice of pharmacy in the state of Ohio?

20 MR. HYNES: Objection. Form.

21 THE WITNESS: Yes.

22 QUESTIONS BY MR. ELSNER:

23 Q. Okay. What is the overarching
24 purpose of the Ohio Board of Pharmacy?

25 A. So we're essentially there to

1 safeguard the public, as well as to, you
2 know, ensure the safe practice of pharmacy in
3 the state.

4 Q. Okay. And does that include
5 preventing the diversion of drugs?

6 MR. HYNES: Objection. Form.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. ELSNER:

9 Q. Would you agree that the board
10 exists and acts to protect the public?

11 MR. HYNES: Objection. Form.

12 MR. SCHEETZ: And, Mike, can we
13 have an agreement that an objection
14 for one is an objection for all?

15 MR. ELSNER: No, Trevor, I want
16 us all to object all day. No, of
17 course.

18 MR. SCHEETZ: I appreciate it.

19 MR. HARRIS: I think that's
20 specifically in the deposition
21 protocol as well, that that rule
22 applies.

23 MR. SCHEETZ: Great, thank you.

24 QUESTIONS BY MR. ELSNER:

25 Q. Do you have the question in

1 mind, Mr. McNamee, or --

2 A. Can you repeat the question,
3 please?

4 Q. I'll do my best. I forgot it
5 myself.

6 Would you agree with me that
7 the board exists and acts to protect the
8 public?

9 MR. HYNES: Objection. Form.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. ELSNER:

12 Q. Okay. Mr. McNamee, would you
13 agree with me that Ohio has suffered more
14 overdose deaths than most other states across
15 the country?

16 MR. HYNES: Objection. Form.

17 THE WITNESS: Yes.

18 QUESTIONS BY MR. ELSNER:

19 Q. In fact, you were involved in
20 the publication of an article in the Journal
21 of American Pharmacists Association.

22 Do you recall that?

23 A. Yes.

24 MR. HYNES: Objection. Form
25 and scope.

1 (McNamee Exhibit 2 marked for
2 identification.)

3 QUESTIONS BY MR. ELSNER:

4 Q. I'm going to show you, and
5 we'll mark as Exhibit 2, MR 4242. If you can
6 display that, please.

7 Thank you.

8 And, Mr. McNamee, is this the
9 article that you participated in writing?

10 A. Yes.

11 Q. Okay. And the title of the
12 article is "Strategies and Policies to
13 Address the Opioid Epidemic: A Case Study Of
14 Ohio."

15 Is that right?

16 A. Yes.

17 Q. Okay. And your name there is
18 the fourth contributor to the article.

19 Is that right?

20 A. Yes.

21 Q. Maybe fifth. There you are.

22 MR. SCHEETZ: Mike, just a very
23 quick objection from Meijer. I don't
24 know if this was produced to us
25 previously, but we would object to the

1 use of any documents that weren't
2 produced to us.

3 But with that said, go ahead.

4 MR. ELSNER: Yeah, I don't
5 really understand this objection.
6 It's produced by the Ohio Board of
7 Pharmacy in Track 7. So if you're not
8 accessing the information that's
9 produced in the track, then you can't
10 waste our time with objections and
11 drive us off course today.

12 MR. SCHEETZ: Is there an OBOP
13 stamp? It says MR, right?

14 MR. ELSNER: No, it says BOP on
15 the bottom of the document.

16 MR. SCHEETZ: Well, we can't
17 see that on the screen.

18 MR. ELSNER: All right. Well,
19 there it is.

20 QUESTIONS BY MR. ELSNER:

21 Q. All right. Mr. McNamee, in the
22 beginning of the article, it says that Ohio
23 has the fifth highest rate of drug overdose
24 deaths in the United States. If we go under
25 objective and setting on the bottom of the

1 page there.

2 Is that accurate, sir?

3 MR. HYNES: Objection. Form.

4 THE WITNESS: That was accurate
5 at the time it was written, yes.

6 QUESTIONS BY MR. ELSNER:

7 Q. Okay. And was it accurate at
8 the time of -- that it was written, that the
9 unintentional drug overdose had become the
10 leading cause of death in Ohio?

11 A. Yes.

12 MR. HYNES: Objection. Form.
13 And objection. Scope.

14 QUESTIONS BY MR. ELSNER:

15 Q. All right. And that was as
16 of -- what was the date of the article, if
17 you recall when it was published?

18 A. I believe it was -- well, it
19 says it was accepted in January of 2017. So,
20 yeah, it was 2017 it was published.

21 Q. Okay. And is it true that in
22 2015 there were over 3,050 overdose deaths in
23 Ohio, and in 2014 there were an estimated
24 12,847 overdose events reversed by emergency
25 medical services with naloxone in Ohio?

1 MR. HYNES: Objection to form
2 and scope.

3 Mike, what topic is this
4 responsive to?

5 MR. ELSNER: It's a document
6 produced by the board, and we're
7 authenticating it.

8 MR. HYNES: You said Topic
9 Number 4 is limited to documents
10 produced in response to I guess the
11 subpoena, the notice, or is it a
12 different subpoena?

13 MR. ELSNER: Well, it's in --
14 no, it's in response to the subpoena
15 and the notice.

16 QUESTIONS BY MR. ELSNER:

17 Q. Sir, is my question right?

18 MR. HYNES: List our objection
19 on scope grounds to the question on
20 the document.

21 MR. SCHEETZ: Also, this is
22 Trevor Scheetz. This was not produced
23 in Track 7 as far as I can tell, so
24 I'll make that same objection from
25 earlier.

1 QUESTIONS BY MR. ELSNER:

2 Q. Mr. McNamee, are the statistics
3 that I just read correct?

4 A. Yes, to the best of my
5 knowledge, the -- it is cited and it is
6 correct based on the cited sources in the --
7 in the document.

8 Q. Okay. And do you agree with me
9 that pharmacists have a unique role to play
10 in the front lines of the opioid epidemic?

11 MR. HYNES: Objection. Form.

12 MR. HARRIS: Objection.

13 MR. HYNES: Scope.

14 THE WITNESS: Yes.

15 QUESTIONS BY MR. ELSNER:

16 Q. Is it true, Mr. McNamee -- we
17 can take that down.

18 Is it true, Mr. McNamee, that
19 the Ohio Board of Pharmacy publishes
20 statistics from time to time on drug
21 overdoses in Ohio?

22 MR. HYNES: Objection. Form
23 and scope.

24 THE WITNESS: No, that's not
25 correct. The Ohio Department of

1 Health.

2 QUESTIONS BY MR. ELSNER:

3 Q. Does the Ohio Board of Pharmacy
4 utilize statistics and incorporate those into
5 its publications?

6 MR. HYNES: Objection. Form
7 and scope.

8 THE WITNESS: I mean, I would
9 say that we've -- we reference the
10 drug overdose crisis in some of our
11 documents, but in many of our -- in
12 our publications, we produce data
13 based on the -- {audio
14 interruption} -- and the drug overdose
15 deaths in the state.

16 MR. HYNES: You cut out there.
17 Can you repeat that?

18 THE WITNESS: So we do
19 reference the overdose death rates in
20 some of our materials, but primarily
21 our documents are related to -- or any
22 statistics that we produce are related
23 to our system, which is our PDMP.

24 MR. ELSNER: I think we're
25 missing the last three or four words

1 of your answer, Mr. McNamee.

2 THE WITNESS: Sorry. So we do
3 not produce documents -- or we do
4 not -- we do not normally reference or
5 incorporate a lot of the drug overdose
6 death statistics in our written
7 materials. Normally we focus on
8 providing data from our PDMP, which is
9 OARRS, the Ohio Automated RX Reporting
10 System.

11 (McNamee Exhibit 3 marked for
12 identification.)

13 QUESTIONS BY MR. ELSNER:

14 Q. I want to mark as Exhibit 3
15 MR 3051.

16 Mr. McNamee, was this a
17 document that was written by the Ohio Board
18 of Pharmacy in the regular course of its
19 business?

20 MR. HYNES: Objection. Form
21 and scope.

22 MR. ELSNER: It's in the
23 notice.

24 MR. HYNES: Oh, it is. I
25 apologize. I'll retract that one,

1 Mike.

2 THE WITNESS: Yes.

3 QUESTIONS BY MR. ELSNER:

4 Q. Okay. And was this document
5 maintained by the board in the regular course
6 of its business?

7 A. Yes.

8 Q. And when the board publishes
9 information such as this, does it do its very
10 best to be accurate?

11 MR. HYNES: Objection. Form.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. ELSNER:

14 Q. Okay. This document states
15 that 80.77 percent of Ohio's 2016 fatal
16 overdose decedents had a history of receiving
17 a prescription for a controlled substance in
18 OARRS.

19 Is that accurate, sir?

20 A. Yes, that is as reported to me
21 from our PDMP director.

22 Q. Okay. And when selected by
23 particular county, for Montgomery County,
24 85.5 percent of the fatal overdose decedents
25 had a history of receiving a prescription for

1 controlled substances in OARRS, correct?

2 A. Yes.

3 Q. Okay. Is there a regulation,
4 sir, in the state of Ohio that requires
5 pharmacies in the state to have adequate
6 safeguards to practice pharmacy in a safe and
7 effective manner?

8 MR. HYNES: Objection. Form.

9 MR. HARRIS: Object to form.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. ELSNER:

12 Q. Okay. And were there any
13 concerns within the Ohio Board of Pharmacy
14 regarding adequate safeguards and appropriate
15 staffing levels at pharmacies in the state?

16 MR. HYNES: Objection. Form.

17 THE WITNESS: I can't
18 specifically answer on the board's
19 perspective. I can answer from a
20 staff's perspective.

21 QUESTIONS BY MR. ELSNER:

22 Q. What is the perspective from
23 the staff perspective?

24 A. The staff perspective is that
25 there certainly was issues related to

1 staffing levels at pharmacies.

2 Q. Okay. And as a result of those
3 concerns, did the Ohio Board of Pharmacy
4 create and issue a workload survey to
5 pharmacists in Ohio?

6 A. Yes.

7 Q. Are you personally familiar
8 with the pharmacists workload survey
9 conducted by the Ohio Board of Pharmacy in
10 July of 2020?

11 A. Yes.

12 Q. And are you prepared to testify
13 as to that survey today?

14 A. Yes.

15 Q. Okay. And you're prepared to
16 do so on behalf of the Ohio Board of Pharmacy
17 as its 30(b)(6) designee.

18 Is that true?

19 A. Correct.

20 Q. Okay. Did you personally work
21 on the Ohio Board of Pharmacy's pharmacists
22 workload surveys?

23 A. Yes.

24 Q. Okay. And what role did you
25 personally have with respect to the

1 pharmacists workload survey in Ohio?

2 A. I primarily drafted it and
3 disseminated it and the results.

4 Q. And did the board send a
5 request to all pharmacists working in Ohio to
6 complete the survey?

7 A. Yes.

8 Q. I want to -- and did the board
9 send this request pursuant to its authority
10 to regulate the practice of pharmacy in Ohio?

11 MR. HYNES: Objection. Form.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. ELSNER:

14 Q. Okay. And did it do so in the
15 regular course of the board's business?

16 MR. HYNES: Objection. Form.

17 THE WITNESS: Yes.

18 QUESTIONS BY MR. ELSNER:

19 Q. Would you agree with me that
20 the purpose of the survey was to captivate --
21 I'm sorry, to capture the vital input
22 feedback from pharmacists across the state of
23 Ohio?

24 MR. HYNES: Objection. Form.

25 MR. HARRIS: Objection. Form.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. ELSNER:

3 Q. And what prompted the Ohio
4 Board of Pharmacy to issue the pharmacists
5 survey in 2020?

6 A. So from the staff level, I
7 think we were getting more and more
8 complaints, you know, anecdotally, you know,
9 through calls or e-mails regarding staffing
10 levels. There were also concerns about
11 delays in getting prescription fills. So we
12 decided to deploy the survey to assess -- you
13 know, to get a better picture of what was
14 occurring in the entire pharmacy space.

15 Q. And before creating the survey
16 and sending the survey out, in addition to
17 complaints from pharmacists and from
18 patients, did you do any research on any
19 complaints or any other surveys issued across
20 the country on this topic?

21 MR. HYNES: Objection. Form.

22 THE WITNESS: We -- yeah, we
23 reached out to Missouri, who had
24 implemented a very similar survey, so
25 we sort of used that as the model.

1 (McNamee Exhibit 4 marked for
2 identification.)

3 QUESTIONS BY MR. ELSNER:

4 Q. Okay. I would like you to pull
5 out -- or display MR 4204, and we'll mark
6 this as the next exhibit, which is Exhibit 4.

7 There should be a cover page to
8 this. I'm sorry, 4204, not 4202. There
9 should be a cover e-mail to this as well.

10 MR. ELSNER: Can we go off the
11 record for a minute?

12 VIDEOGRAPHER: The time right
13 now is 9:24 a.m. We're off the
14 record.

15 (Off the record at 9:24 a.m.)

16 VIDEOGRAPHER: The time right
17 now is 9:26 a.m. We're back on the
18 record.

19 QUESTIONS BY MR. ELSNER:

20 Q. Mr. McNamee, we're going to
21 display now Exhibit 4, MR 4204.

22 Sir, is this an e-mail that you
23 sent to Shawn Wilt on June 4, 2020?

24 A. Yes.

25 Q. And who is Shawn Wilt at this

1 time?

2 What role did he play with the
3 board?

4 A. He was either our vice
5 president or our president at the time or he
6 was coming into the president -- no, he was
7 our vice president of the board.

8 Q. Okay. And Mr. Wilt works for
9 Meijer, is that correct, or did at the time?

10 A. Yes, that's correct.

11 Q. And in the e-mail you sent to
12 him a proposed workload survey and some
13 background on national statistics and state
14 statistics.

15 Is that true?

16 A. Yes.

17 Q. Okay. And you mentioned to us
18 the results of a Missouri survey of
19 pharmacists.

20 Did you include those results
21 to Mr. Wilt as well?

22 A. Yes.

23 Q. Okay. And if we turn toward
24 the -- page 6 of the document, kind of
25 through the end, are these the results of the

1 Missouri survey?

2 And we can flip through the
3 pages if you need to do that.

4 A. Yeah, that's the Missouri
5 survey.

6 Q. Thank you.

7 In the background section on
8 page 2 of Exhibit 4, there's a document
9 examining pharmacists' workload.

10 Were you involved in the
11 creation of this document?

12 A. Yes.

13 Q. Okay. And did you create this
14 document in the regular course of your
15 business for the Ohio Board of Pharmacy?

16 A. Yes.

17 Q. All right. And is this a true
18 and accurate copy of the e-mail and
19 attachments that you sent to Mr. Wilt?

20 A. Yes.

21 Q. Okay. In the first line of
22 this document, you indicate that nationwide
23 several media outlets have highlighted the
24 growing concern that the increasing demands
25 on pharmacist workload could be posing a risk

1 to patients.

2 Is that true?

3 A. Yes, based on the cited sources
4 there.

5 Q. Okay. And the cited sources
6 include, in footnote 1, an article from The
7 Chicago Tribune entitled "Pharmacies Miss
8 Half of the Dangerous Drug Combinations."

9 Is that right?

10 A. Yes.

11 Q. Okay. And did you review that
12 article?

13 A. Yes.

14 (McNamee Exhibit 5 marked for
15 identification.)

16 QUESTIONS BY MR. ELSNER:

17 Q. Okay. And I'm going to display
18 that article for you. If we could pull up
19 MR 849. And we'll mark this as Exhibit 5.

20 GINA VELDMAN: Mike, you said
21 849?

22 MR. ELSNER: Yes, ma'am.

23 GINA VELDMAN: Okay. I don't
24 have an 849.

25 MS. UNTERREINER: Gina, it's in

1 your e-mail.

2 MR. ELSNER: We can go off the
3 record for a few minutes. Let us see
4 if we can --

5 GINA VELDMAN: I got it. I got
6 it. Just takes a minute to -- okay.

7 QUESTIONS BY MR. ELSNER:

8 Q. Mr. McNamee, I've displayed for
9 you Exhibit 5.

10 Is this The Chicago Tribune
11 article that you reference in footnote 1 and
12 sent to Mr. Wilt?

13 MR. HYNES: Objection to the
14 exhibit.

15 MR. ELSNER: I'm sorry?

16 MR. HYNES: Note our objection
17 to the exhibit, Mike. It was
18 excluded --

19 MR. ELSNER: No, I heard your
20 objection. I didn't hear his answer.

21 THE WITNESS: Yes, that's a --
22 that's a copy of the -- of the
23 article.

24 QUESTIONS BY MR. ELSNER:

25 Q. Okay. And, Mr. McNamee, what's

1 your understanding of what the Chicago
2 Tribune did in this study?

3 A. So they looked at -- they
4 examined whether or not drug interactions
5 were flagged. They also examined the sort
6 of -- they examined the squeeze that's being
7 put on the -- {audio interruption} --
8 including the need to meet certain quotas or
9 metrics.

10 So I think it did highlight
11 the -- it sort of provided an overview of
12 what was the current and the retail pharmacy
13 space.

14 Q. Okay. And if we look at the
15 fifth paragraph down here on the page, it
16 reads, "In the largest and most comprehensive
17 study of its kind, the Tribune tested 255
18 pharmacies to see how stores would dispense
19 dangerous drug pairs without warning
20 patients, and 52 percent of the pharmacies
21 sold the medications without mentioning the
22 potential interaction, striking evidence of
23 an industrywide failure that places millions
24 of consumers at risk."

25 Was this a concern at the Ohio

1 Board of Pharmacy at the staff level with
2 respect to pharmacists' workload in Ohio
3 potentially?

4 MR. HYNES: Objection. Form.

5 THE WITNESS: Yeah, this is one
6 of the pieces of evidence that led the
7 staff to growing concern regarding
8 working conditions in pharmacies.

9 QUESTIONS BY MR. ELSNER:

10 Q. And the article concluded in
11 the next paragraph that CVS dispensed
12 medications with no warning, according to
13 this study, 63 percent of the time, and that
14 Walgreens had dispensed the medications
15 without any warning 30 percent of the time.

16 Is that what the article
17 indicates?

18 A. Yes, that's what the article
19 indicates.

20 Q. Okay. And if we go to the next
21 page on page 2, Walmart was also a component
22 of this study, and Walmart had failed
23 43 percent of these tests.

24 Is that what the article
25 indicates?

1 A. Yes, that's what the article
2 indicates.

3 Q. Okay. And was there a concern
4 at the Ohio Board of Pharmacy that there
5 might be errors in dispensing as a result of
6 metrics and quota and the speed at which
7 pharmacists might be required to fill
8 prescriptions in their stores?

9 MR. HYNES: Objection. Form.

10 THE WITNESS: Yes. Yes, at the
11 staff level.

12 QUESTIONS BY MR. ELSNER:

13 Q. Okay. And you keep making a
14 distinction between the staff level and --
15 was there a different view between the staff
16 and between the actual board members of the
17 Ohio Board of Pharmacy?

18 A. Well, you know, if you're
19 asking me if the board has taken a formal
20 position on, you know, certain aspects of,
21 you know, this issue, you know, they haven't
22 necessarily formally done it in open session.

23 But we've certainly been having
24 these discussions with them. They've been
25 supportive of our efforts to examine this

1 issue. However, they haven't sort of
2 formally stated that, you know, in open
3 session, in a meeting, that this is -- you
4 know, that this is concretely a significant
5 issue.

6 That being said, they have
7 allowed us to proceed in examining this
8 issue, recognizing that it is a problem, but
9 I just wanted to be clear that the board
10 makes formal statements in open session, and
11 nothing has been formalized in a -- in an
12 open meeting.

13 Q. In Exhibit 5 -- I'm sorry,
14 Exhibit 4, which was your e-mail to Mr. Wilt,
15 you also reference another publication from
16 The New York Times on page 2 in footnote 2.

17 Is that correct?

18 A. Yes, that's correct.

19 Q. And is this another article
20 that you considered in determining whether to
21 create an issue -- a pharmacist workload
22 survey from the Ohio Board of Pharmacy?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: Yes, that's
25 correct.

1 QUESTIONS BY MR. ELSNER:

2 Q. Okay. And the title of this
3 article is "How Chaos at Chain Pharmacies is
4 Putting Patients At Risk."

5 Have you read this article,
6 sir?

7 A. Yes.

8 (McNamee Exhibit 6 marked for
9 identification.)

10 QUESTIONS BY MR. ELSNER:

11 Q. Okay. I would like to pull
12 that out if we could, and we'll mark this as
13 Exhibit 6. It's MR 4207.

14 And, Mr. McNamee, is Exhibit 6
15 The New York Times article that you
16 referenced in footnote 2?

17 A. Yes, that is correct.

18 Q. Okay. And what is your overall
19 impression in having reviewed this New York
20 Times article and in sending it to Mr. Wilt
21 in 2020?

22 A. So I -- you know, it was part
23 of a -- it was part of a -- it was
24 essentially an article that was provided in
25 order to justify moving forward with the

1 survey. So we were trying to provide enough
2 evidence of what was going around in other
3 parts of the country to, you know, justify us
4 then assessing what was happening in Ohio.

5 Q. Okay. And if we turn to page 2
6 of the article, it states, "In letters to
7 state regulatory boards," in the second full
8 paragraph, "and in interviews with the New
9 York Times, many pharmacists at companies
10 like CVS, Rite Aid and Walgreens described
11 understaffed and chaotic workplaces where
12 they said it had become difficult to perform
13 their jobs safely, putting the public at risk
14 of medication errors."

15 Was this a concern to the Ohio
16 Board of Pharmacy and did it impact its
17 decision to issue the workload survey in
18 Ohio?

19 MR. HYNES: Objection. Form.

20 THE WITNESS: So, yes, this is
21 an overarching concern. Any time, you
22 know -- the goal is to obviously
23 create an environment where we're
24 reducing medication errors or
25 preventing them from happening.

1 So, yeah, it was a piece of the
2 evidence in order for us to move
3 forward with that survey.

4 QUESTIONS BY MR. ELSNER:

5 Q. And had the Ohio Board of
6 Pharmacy received any complaints from
7 pharmacists related to understaffing?

8 A. I have been told of complaints
9 from our complaints department who is sort of
10 bringing this issue to me periodically before
11 we issued the survey. So it was -- it kind
12 of came in drips and drabs.

13 Q. If we go to the next paragraph,
14 it states, "They struggle to fill
15 prescriptions, give flu shots, tend the
16 drive-through, answer phones, work the
17 register, counsel patients and call doctors
18 and insurance companies, they said, all while
19 racing to meet corporate performance metrics
20 that they characterize as unreasonable and
21 unsafe in an industry squeezed to do more
22 with less."

23 Did I read that correctly?

24 A. Yes.

25 Q. Okay. And were you aware --

1 was the board aware that pharmacists in Ohio
2 were required at some pharmacies to conduct
3 multiple tasks like this and that their
4 performance was being measured by corporate
5 performance metrics?

6 A. We were aware of the practice
7 of metrics. We were not aware until we did
8 the survey of the impacts.

9 Q. Okay. We mentioned these two
10 articles, and if we would go back to
11 Exhibit 4.

12 In addition to the articles,
13 were there also other workplace surveys
14 conducted by other states and entities?

15 A. Yes.

16 Q. Okay. And you had mentioned
17 the Missouri study that was conducted. In
18 fact, it's attached to Exhibit 4.

19 There's also a reference here
20 to other states that conducted surveys,
21 Tennessee and Maryland, have also implemented
22 surveys.

23 Is that true?

24 MR. HYNES: Objection. Form.

25 THE WITNESS: That is correct.

1 QUESTIONS BY MR. ELSNER:

2 Q. Okay. And did you review those
3 surveys?

4 A. So we did reach out to them,
5 and we weren't able to get copies of their
6 surveys. Missouri was the only -- was the
7 only state that provided us with their survey
8 and results.

9 Q. All right. You do summarize
10 the results of the survey that was conducted
11 in Missouri and sent that to Mr. Wilt in the
12 following paragraph just below this comment.

13 Do you see that?

14 A. Yes.

15 Q. Okay. And is that a summary
16 that you helped create, sir?

17 A. Yes.

18 Q. Okay. And the document here
19 states that "51.8 percent of respondents
20 either disagreed or strongly disagreed with
21 the following statement: I have adequate
22 time to complete my job in a safe and
23 effective manner."

24 Is that what the survey
25 reflected?

1 A. Yes.

2 Q. And was this a concern of the
3 Ohio Board of Pharmacy for pharmacists in
4 Ohio?

5 A. Well, this is the Missouri
6 data. It was, again, one data point used to
7 justify us conducting our own survey.

8 Q. Right.

9 And that was my point, is that
10 this was the results of the Missouri survey,
11 and those results had an impact on the
12 board's decision to recommend issuing a
13 workplace survey in Ohio, correct?

14 A. Yes.

15 MR. HYNES: Objection. Form.

16 QUESTIONS BY MR. ELSNER:

17 Q. Okay. Was there a concern at
18 the Ohio Board of Pharmacy that pharmacists
19 in Ohio might be in a similar position to
20 those pharmacists in Missouri in not having
21 enough time to safely and effectively
22 completely their work?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: Yes, that was a
25 concern.

1 QUESTIONS BY MR. ELSNER:

2 Q. Okay. Since this document was
3 drafted, did you have the opportunity or have
4 you reviewed any other workplace surveys
5 conducted by any other states?

6 A. No.

7 Q. Okay. You also reference here
8 in the top of this document the national
9 pharmacy workforce study that was performed.

10 Did you review the results of
11 that study?

12 A. Yes.

13 Q. Okay. And, in fact, you
14 summarized the results of that study for
15 Mr. Wilt in this document.

16 Is that true?

17 A. Yes.

18 MR. HYNES: Objection. Form.

19 QUESTIONS BY MR. ELSNER:

20 Q. And did this study also -- the
21 national workforce study, is that a study by
22 the American Pharmacists Association?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MR. ELSNER:

2 Q. Okay. And did that study help
3 form the basis of your recommendation to
4 conduct a workplace survey in Ohio?

5 MR. HYNES: Objection. Form.

6 THE WITNESS: Yes.

7 (McNamee Exhibit 7 marked for
8 identification.)

9 QUESTIONS BY MR. ELSNER:

10 Q. If we could pull out MR 4244,
11 and we'll mark this as Exhibit 7.

12 This is the 2014 national
13 pharmacist workforce survey.

14 Did you review this,
15 Mr. McNamee, in your work at the Ohio Board
16 of Pharmacy?

17 A. I did review this, although I
18 primarily reviewed the 2019.

19 Q. Okay. And we'll look at that
20 one as well.

21 If we could turn to -- hold on
22 one second.

23 If we can turn to page 62 of
24 the 2014 survey, which was marked as
25 Exhibit 7.

1 And the top paragraph there,
2 second sentence, it reads, "Overall,
3 66 percent of pharmacists in 2014 rated their
4 workload level at their place of practice as
5 high or excessively high."

6 Do you see that?

7 A. Yes.

8 Q. Did I read that correctly,
9 Mr. McNamee?

10 Are you following me?

11 A. Yes.

12 Q. Okay. And if we go down to the
13 second paragraph, it says, "Across practice
14 settings, the highest proportions of
15 pharmacists rating their workload as high or
16 extremely high were in chain and mass
17 merchandiser pharmacy settings."

18 Is that correct?

19 A. Yes.

20 Q. I want to go through a little
21 terminology here. When we say chain
22 pharmacies, what type of pharmacies are we
23 referring to there?

24 MR. HYNES: Objection. Form.

25 THE WITNESS: I'm not a -- I

1 can only tell you what we mean in Ohio
2 when we say chain. I can't
3 specifically tell you what AP -- or
4 the APhA indicated as chain.

5 QUESTIONS BY MR. ELSNER:

6 Q. In Ohio how would you define
7 the chain pharmacy or what types of
8 pharmacies would be included in chains?

9 A. Yeah. So we break our
10 pharmacies down by independent, meaning one
11 store, and then we have small chain, which is
12 2 to 11 stores, and then we have large chain,
13 which is any company that has 12 or more
14 outlets in the state.

15 And so -- large -- I'm sorry.

16 Q. No, no. Go ahead and finish.
17 I didn't mean to interrupt you.

18 A. And so those large chains do
19 include the larger companies like CVS,
20 Meijer, Giant Eagle, Walgreens, Rite Aid,
21 those folks.

22 Q. Okay. Thank you.

23 And if we go down to the bottom
24 of the page here in the last paragraph
25 starting in the second sentence, "In 2014,

1 pharmacists working in chain and mass
2 merchandiser settings indicated that their
3 current workload had a negative or very
4 negative effects on the time spent with
5 patients."

6 Did I read that correctly?

7 A. Yes.

8 Q. Okay. "And additionally,
9 78 percent and 72 percent of pharmacists
10 working in chain and supermarket settings
11 respectively indicated negative or very
12 negative effects on the opportunity to take
13 adequate breaks."

14 Did I read that correctly as
15 well?

16 A. Yes.

17 Q. Was this a concern of the Ohio
18 Board of Pharmacy that pharmacists in Ohio
19 may be -- may also have limited abilities to
20 spend time with patients and limited
21 opportunities for breaks in a highly
22 stressful environment?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: Yes, based off of
25 the surveys that we saw in the other

1 states, certainly that was the case in
2 Ohio.

3 (McNamee Exhibit 8 marked for
4 identification.)

5 QUESTIONS BY MR. ELSNER:

6 Q. And you mentioned that you
7 reviewed the 2019 survey conducted by the
8 American Pharmacists Association. I would
9 like to pull that out, and we'll mark that as
10 Exhibit 8. That is 4205, MR 4205.

11 Mr. McNamee, is Exhibit 8 the
12 national pharmacist workforce study that you
13 reviewed and referenced in your e-mail to
14 Mr. Wilt?

15 A. Yes, that's correct.

16 Q. Okay. And the results from the
17 2019 survey were very similar to the results
18 of the 2014 survey.

19 Is that true?

20 MR. HARRIS: Object to form.

21 THE WITNESS: Yes.

22 QUESTIONS BY MR. ELSNER:

23 Q. Okay. And, in fact, the -- if
24 we look -- and these pages are numbered a
25 little bit strange, but if we go to 3-ES --

1 oh, there we go. There we go.

2 And we go to the second full
3 paragraph beginning with "overall in 2019."

4 It reads, "71 percent of
5 full-time actively practicing pharmacists
6 rated their workload level at their primary
7 place of employment as high or excessively
8 high, compared to 66 percent and 68 percent
9 of full-time pharmacists in 2014 and 2009
10 respectively."

11 Did I read that correctly?

12 A. Yes.

13 Q. Okay. And then a few sentences
14 down starting with, "By primary employment
15 setting, the highest proportions of full-time
16 pharmacists rating their workload as high or
17 extremely high were chain and mass
18 merchandiser pharmacy settings."

19 Is that true?

20 A. Yes.

21 Q. Okay. And is this, too, a
22 survey that the Ohio Board of Pharmacy relied
23 on in support of its decision to submit their
24 workload survey to pharmacists to Ohio?

25 MR. HYNES: Objection. Form.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. ELSNER:

3 Q. Okay. If we go back to
4 Exhibit 4 and we look at the second page
5 again, you provided a summary in this
6 document of the 2019 survey in the first
7 three bullets in the document.

8 Is this a summary that you've
9 created, Mr. McNamee?

10 A. Yes.

11 Q. Okay. And in the second bullet
12 there you write, "The three most common
13 highly stressful job experiences or aspects
14 were having so much work to do that
15 everything cannot be done well, 43 percent
16 reporting highly stressful, working at
17 current staffing levels, and fearing that a
18 patient will be harmed by a medication
19 error."

20 Did I read that correctly?

21 A. Yes.

22 Q. Okay. And was this a concern
23 of the Ohio Board of Pharmacy that the stress
24 environment for pharmacists from other
25 surveys indicated that there could be

1 medication errors as a result?

2 MR. HYNES: Objection. Form.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. ELSNER:

5 Q. Okay. And, in fact, you
6 provided a little chart at the end of -- in
7 the middle of Exhibit 4 on this page of the
8 number of errors that were reported in
9 dispensing.

10 Is that right?

11 A. Those are the number of cases
12 that were opened as a result of an error in
13 dispensing or alleged error in dispensing.

14 Q. Okay. And the cases that are
15 opened, according to the code section here,
16 in order to open a case, it's required that
17 the event be for reckless behavior.

18 Is that right?

19 MR. HYNES: Objection. Form.

20 THE WITNESS: Yes, or -- and
21 sometimes we get them by patient
22 complaint. I would say patient
23 complaint is probably the primary
24 method by which we get our error in
25 dispensing cases, according to our

1 compliance department.

2 QUESTIONS BY MR. ELSNER:

3 Q. And so if a pharmacist simply
4 made a simple mistake, would that rise to the
5 level of reckless behavior that would be
6 covered by the statute?

7 A. No.

8 Q. Okay. So is the point that
9 you're making here is that the number of
10 errors that are in this chart are
11 underreporting the actual number of errors
12 that are occurring in the state of Ohio?

13 MR. HYNES: Objection. Form.

14 THE WITNESS: Well, what I do
15 is I try to make -- I clarify that
16 there are potentially more errors out
17 there, but we only get reports from --
18 if a patient reports it to us or if it
19 meets that reckless standard.

20 So, in theory, yes, there could
21 be more errors that are not reported
22 to us.

23 QUESTIONS BY MR. ELSNER:

24 Q. Okay. Was there a worry that
25 pharmacists in the state of Ohio may not have

1 the time to adequately investigate and
2 perform their corresponding responsibilities
3 as a result of the stressful environment in
4 which they work and the metrics by which they
5 are measured?

6 MR. HYNES: Objection. Form.

7 MR. HARRIS: Form.

8 THE WITNESS: Yeah, based on
9 the data that we were evaluating.

10 QUESTIONS BY MR. ELSNER:

11 Q. And you sent these proposed
12 questions that were going to be used in the
13 workload to Mr. Wilt on pages 3, 4 and 5 of
14 this document.

15 Is that true?

16 A. Yes.

17 Q. Is it fair to say that most of
18 the questions that are drafted here are posed
19 as a concern with patient safety?

20 MR. HYNES: Objection. Form.

21 THE WITNESS: Yes, that was the
22 primary -- yeah, that was the primary
23 objective.

24 QUESTIONS BY MR. ELSNER:

25 Q. And why did the board tie the

1 questions asked in the survey to patient
2 safety?

3 A. Because it's tied to our
4 overall mission, and this -- the statute
5 we're using in order -- there's a statute
6 that we were operating under that --
7 regarding allowing pharmacists to practice in
8 a safe and effective manner. And so that is
9 all related to patient safety.

10 Q. Okay. And so you weren't
11 simply asking pharmacists to complete the
12 survey generally, do you have enough time to
13 complete your job. You tied many of those
14 questions to a specific point, that is, do
15 you have enough time to complete your job in
16 a safe and effective manner.

17 Was that true?

18 MR. HYNES: Objection. Form.

19 THE WITNESS: Yes, and those
20 were all taken as -- a lot of those
21 were taken from the Missouri survey.

22 QUESTIONS BY MR. ELSNER:

23 Q. Okay. And was there an effort
24 here to try to determine how pharmacists
25 currently felt about their working

1 conditions; that is, you're not asking them
2 to historically tell us what they felt over
3 time, but what they feel at the moment that
4 they're completing the survey, was that the
5 intent?

6 MR. HYNES: Objection. Form.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. ELSNER:

9 Q. Okay. Now, in addition to
10 providing these draft survey questions to
11 Mr. Wilt on the board, were these questions
12 shared with anyone else before they were
13 published?

14 A. Yes. They were --

15 Q. Who was -- I'm sorry. Please
16 continue.

17 Who else did you share the
18 questions with?

19 A. Yes, they were shared
20 internally, so with our compliance and
21 enforcement department, with my executive
22 director, Steve Schierholt, and also with the
23 governor's office as well.

24 Q. Okay. And did you do your very
25 best effort -- did the board do its very best

1 effort to try to write fair and unbiased
2 questions?

3 MR. HYNES: Objection. Form.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. ELSNER:

6 Q. And why was that important, to
7 try to write fair and unbiased questions?

8 A. We were trying to obviously not
9 have any bias in our responses so we can make
10 sure that we were objectively capturing the
11 working conditions at the time the survey was
12 deployed.

13 Q. Okay. And do you feel -- and
14 does the board feel that these questions
15 adequately performed that objective?

16 A. Yes.

17 MR. HARRIS: Object to form.

18 QUESTIONS BY MR. ELSNER:

19 Q. Okay. Did you also share the
20 questions with Donald Sullivan?

21 A. Yes.

22 Q. Who is Donald Sullivan?

23 A. He's a professor over at OSU
24 and also an expert that we sometimes turn to
25 for our cases, and so, you know, we're

1 talking about another issue and thought he
2 might be a good sounding board as well to get
3 sort of an external look at the survey.

4 Q. And was he supportive of the
5 questions that you had issued in the survey?

6 A. Yes.

7 Q. Okay. Did he have any
8 objections to the questions that you had
9 issued in the survey?

10 A. I don't remember if he did. I
11 don't think so.

12 Q. Okay. If he had an objection
13 to a question in the survey, would you have
14 considered changing the question?

15 A. Potentially.

16 Q. Did the board share the survey
17 questions with anyone else outside of the
18 governor's office, Mr. Sullivan and
19 compliance staff and others that you
20 mentioned?

21 A. I don't recall if we ever
22 shared it beyond those folks.

23 Q. Was the workload survey sent to
24 all pharmacists in Ohio?

25 A. Yes.

1 Q. And why did the board want to
2 send the survey to all pharmacists in Ohio?

3 A. Because we wanted to accurately
4 capture the working conditions across the
5 state.

6 Q. Okay. And in sending the
7 survey to all pharmacists in Ohio, would that
8 have included pharmacists at Walgreens?

9 A. Yes.

10 Q. CVS?

11 A. Yes.

12 Q. Walmart?

13 A. Yes.

14 Q. Meijer?

15 A. Yes.

16 Q. Kroger?

17 A. Yes.

18 Q. Okay. Was the survey sent
19 electronically or in paper form?

20 A. Electronically.

21 Q. Okay. Why was the survey sent
22 electronically?

23 A. That would -- just -- well, for
24 one, we didn't have the resources to send out
25 a paper survey, and, two, obviously, sending

1 electronically would be the most efficient
2 way to get responses.

3 (McNamee Exhibit 9 marked for
4 identification.)

5 QUESTIONS BY MR. ELSNER:

6 Q. I would like to pull out
7 MR 4247 and mark this as the next exhibit,
8 which will be Exhibit 9.

9 Do you recognize this document,
10 Mr. McNamee?

11 A. Yes.

12 Q. Okay. And is this a draft of
13 the e-mail that was sent to pharmacists in
14 Ohio with the 2020 pharmacists workload
15 survey?

16 A. Yes.

17 Q. Does it appear accurate and
18 complete to you?

19 A. Yes.

20 Q. Okay. Over what period of time
21 did pharmacists have to complete the workload
22 survey?

23 A. I believe --

24 Q. I'm not sure it's reflected on
25 the document, but...

1 A. Yeah, I don't -- I don't recall
2 the specific dates. I know they had a few
3 weeks to do it. And that information should
4 be in the survey report itself.

5 Q. Okay. We'll look at that
6 later. We can do something else, though, to
7 refresh your memory there.

8 Is the -- did the board make
9 steps to ensure that pharmacists only
10 completed one survey?

11 MR. HYNES: Objection. Form.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. ELSNER:

14 Q. How did the board do that?

15 A. So we worked with the IT
16 department to create individualized links for
17 each -- for each licensee was sent an e-mail.

18 Q. And were the surveys
19 conducted -- were the responses -- I'm sorry,
20 let me strike that.

21 Were the workload survey
22 responses anonymous, or did the pharmacists
23 have to identify their names?

24 A. No, we made a concerted effort
25 to make sure that they could respond

1 anonymously.

2 Q. Why did the board do that?

3 A. We were concerned about any
4 retaliation from an employer.

5 Q. And why did the board have a
6 concern about retaliation from employers?

7 Did you have some reason to
8 suggest that occurred historically?

9 MR. HYNES: Objection. Form.

10 THE WITNESS: No, but we
11 certainly didn't want to get anybody
12 in trouble, and oftentimes people
13 don't realize how liberal our public
14 records laws are. So in previous
15 surveys I've done for, let's say, our
16 medical marijuana control program,
17 folks have, you know, put their
18 information in there, like in the open
19 field comments and, you know, revealed
20 themselves as patients. So we wanted
21 to make sure -- and they didn't
22 realize that was the case, so -- and
23 to make sure that, you know,
24 pharmacists weren't putting themselves
25 out there unnecessarily by, you know,

1 disclosing all of their information
2 with their comments.

3 QUESTIONS BY MR. ELSNER:

4 Q. And, in fact -- and we'll look
5 at this later -- there was a question with
6 respect to whether or not pharmacists felt
7 that their employers may take retribution
8 against them for completing the survey.

9 True?

10 MR. HYNES: Objection. Form.

11 THE WITNESS: I'm sorry, could
12 you repeat that?

13 QUESTIONS BY MR. ELSNER:

14 Q. I'll strike that. We'll get to
15 it a little bit later.

16 A. Okay.

17 Q. Did the board believe that
18 providing anonymous responses to the survey
19 would provide more accurate and complete
20 responses?

21 MR. HYNES: Objection. Form.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. ELSNER:

24 Q. Why did the board believe that?

25 A. I think generally that -- I --

1 just in general I feel like, you know, we
2 didn't want to put anyone in a -- in a
3 situation where they didn't feel comfortable
4 expressing themselves and the conditions that
5 they were working in, and so we didn't want
6 to put anybody -- anybody's career in
7 jeopardy. So we felt like we would get more
8 honest and -- more honest responses if we
9 were to keep it anonymous.

10 Q. Very good.

11 MR. ELSNER: Why don't we go
12 off the record if we could.

13 VIDEOGRAPHER: The time right
14 now is 10:05 a.m. We're off the
15 record.

16 (Off the record at 10:05 a.m.)

17 VIDEOGRAPHER: The time right
18 now is 10:19 a.m. We're back on the
19 record.

20 (McNamee Exhibit 10 marked for
21 identification.)

22 QUESTIONS BY MR. ELSNER:

23 Q. I'm going to mark MR 4202 as
24 the next exhibit. It will be Exhibit 10.
25 It's P 511. And I'm going to ask that we

1 turn to page 3 of the document.

2 Mr. McNamee, is this a true and
3 correct copy of the report issued by the Ohio
4 Board of Pharmacy disclosing the results of
5 the pharmacist workload survey?

6 A. Yes.

7 Q. And is this report accurate and
8 complete?

9 MR. HYNES: Objection. Form.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. ELSNER:

12 Q. Did the Ohio Board of Pharmacy
13 release this report to the public?

14 A. Yes.

15 Q. It bears the seal of the State
16 of Ohio.

17 Is that right?

18 A. Yes.

19 Q. Is it an official State of Ohio
20 government report?

21 MR. HYNES: Objection. Form.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. ELSNER:

24 Q. Okay. And it's -- the results
25 of the survey are available on the board's

1 website today, true?

2 MR. HYNES: Objection. Form.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. ELSNER:

5 Q. Okay. Who is responsible for
6 reviewing and analyzing the workload survey
7 results at the board?

8 A. Myself, primarily.

9 Q. And did you alter or change any
10 of the comments or any of the responses to
11 the survey?

12 A. No.

13 Q. Did you make any changes to the
14 workload submissions to the survey?

15 MR. HYNES: Objection. Form.

16 THE WITNESS: No.

17 QUESTIONS BY MR. ELSNER:

18 Q. Were there any instances
19 reported to you or to the board of fraud or
20 inappropriate conduct with respect to the
21 conduction -- with respect to conducting the
22 survey?

23 MR. HYNES: Objection.

24 THE WITNESS: No.

25

1 QUESTIONS BY MR. ELSNER:

2 Q. Okay. Do you believe that the
3 survey is accurate, complete and reliable?

4 A. Yes.

5 MR. HYNES: Objection. Form.

6 QUESTIONS BY MR. ELSNER:

7 Q. If a respondent included in
8 their response the name of their employer,
9 did the board keep those employer names in
10 the survey responses?

11 A. Yes.

12 Q. Okay. Why did you decide to do
13 that?

14 A. Well, essentially, there were
15 so many freeform comments that it would be
16 nearly impossible to remove all of that.

17 In addition, public records law
18 doesn't require us to redact that
19 information.

20 So it was -- it was just a
21 matter of being as transparent as possible
22 with the survey results.

23 Q. Okay. And was that a goal of
24 the Ohio Board of Pharmacy, to be as
25 transparent as possible with respect to the

1 results of the survey from pharmacists in
2 Ohio?

3 MR. HYNES: Objection. Form.

4 THE WITNESS: Yes. Yes.

5 QUESTIONS BY MR. ELSNER:

6 Q. Before we go into the specific
7 results of the survey, I just from the outset
8 just like to ask, what was the reaction from
9 the board when you received the results of
10 this survey?

11 What were your impressions
12 based on the feedback that you received from
13 the survey?

14 MR. HYNES: Objection. Form.

15 MS. OCHMAN: Objection.

16 THE WITNESS: I mean, from my
17 personal reading of the survey, it was
18 very concerning to me, as well as to a
19 lot of the staff.

20 QUESTIONS BY MR. ELSNER:

21 Q. What was it about the survey
22 responses that concerned you and the staff at
23 the Ohio Board of Pharmacy?

24 A. Just the overwhelming consensus
25 of there being a significant problem,

1 particularly in the large chain setting, that
2 was -- that that really stood out to us as a
3 data point.

4 Q. What particular problem in the
5 large chain setting was concerning to you?

6 A. You know, issues regarding the
7 use of metrics, not feeling like they have
8 enough time or staffing levels. You know,
9 many of the questions -- the results of the
10 questions, if you break them down by, you
11 know, pharmacy type, were concerning, and
12 particularly in that large chain setting.

13 And the freeform comments also
14 were -- you know, had some disturbing
15 revelations in them.

16 Q. And did you review those
17 freeform comments?

18 A. I can't say that I reviewed
19 every single one, but I did -- I did scroll
20 through it and try and read as much as I
21 could.

22 Q. One of the questions that you
23 asked in the survey for each person taking
24 the survey was what type of pharmacy they
25 worked in.

1 Is that true?

2 A. Yes.

3 Q. Okay. And if we go to
4 question 10, which is on page 23.

5 Does this break down the number
6 of respondents who worked at particular
7 pharmacy practice settings?

8 A. Yes.

9 Q. Why was it important to the
10 board to ask the respondent to identify their
11 practice site?

12 A. Because not all practice sites
13 are the same. So working in a hospital
14 setting or a nursing home is going to be
15 vastly different from working in a more
16 retail-facing setting. So we wanted to be
17 able to capture or show the differences in
18 their responses based on setting type.

19 Q. And a large number of the
20 respondents here, clearly more than half,
21 worked in either large chain standalone
22 pharmacies or large chain grocery store
23 establishments, true?

24 MR. HYNES: Objection. Form.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. ELSNER:

2 Q. Okay. And in addition to
3 asking where the respondents worked, did you
4 also inquire about the length of service or
5 the amount of time they had worked in
6 pharmacies?

7 A. Yes, I believe that was a
8 question on the survey.

9 Q. And if we look at question 15
10 on page 31, if we could pull that up, are
11 these the responses to question 15?

12 A. Yes.

13 Q. Okay. And it indicates, does
14 it not, that 63 percent of the -- of those
15 that had worked in the pharmacy, over
16 63 percent, had worked there for ten years or
17 more.

18 Is that fair?

19 MR. HYNES: Objection. Form.

20 THE WITNESS: You said -- oh,
21 yes, it is -- yeah. Yes, more than
22 63 percent.

23 QUESTIONS BY MR. ELSNER:

24 Q. And only 10 percent of those
25 that completed the survey had been in

1 practice for three years or less, true?

2 MR. HYNES: Objection. Form.

3 THE WITNESS: Yes, that's

4 correct.

5 QUESTIONS BY MR. ELSNER:

6 Q. Okay. So fair to say that a
7 majority of the people that completed the
8 survey had extensive experience working in a
9 pharmacy setting, fair?

10 MR. HARRIS: Objection. Form.

11 THE WITNESS: Yes, they had ten
12 or more years of experience.

13 QUESTIONS BY MR. ELSNER:

14 Q. Okay. And I want to look
15 through a few of the questions, and I want to
16 start with question 1, which we're going to
17 pull up here.

18 And the question was, "I feel
19 that I have adequate time to complete my job
20 in a safe and effective manner," and it's
21 organized here by practice site.

22 True?

23 A. Yes, that's correct.

24 Q. And is this the first question
25 in the survey?

1 A. Yes.

2 Q. Okay. And did you organize the
3 results of this survey and organize them by
4 practice site?

5 A. Yes.

6 Q. Okay. And is it true that 511
7 of those working in a large chain standalone
8 pharmacy strongly disagreed with the
9 statement that they had adequate time to
10 complete their job?

11 MR. HYNES: Objection. Form.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. ELSNER:

14 Q. Okay. And is it true that 500
15 of those responding to the survey who worked
16 in large chain standalone pharmacies
17 disagreed with the statement that they felt
18 that they had adequate time to complete their
19 job in a safe and effective manner?

20 MR. HYNES: Objection. Form.

21 THE WITNESS: Yes.

22 QUESTIONS BY MR. ELSNER:

23 Q. Okay. So that's 1,011 of the
24 1,268 respondents to this question working in
25 large chain pharmacies, true?

1 MR. HYNES: Objection. Form.

2 THE WITNESS: Yes.

3 QUESTIONS BY MR. ELSNER:

4 Q. Okay. And the percentage of
5 those pharmacists that either agreed -- I'm
6 sorry, that either strongly disagreed or
7 disagreed with the statement that they felt
8 they had adequate time to complete their job
9 in a safe and effective manner in the large
10 chain pharmacy setting was 8 -- was roughly
11 80 percent, true?

12 MR. HYNES: Objection. Form.

13 THE WITNESS: Yeah, it was the
14 79.3 percent.

15 QUESTIONS BY MR. ELSNER:

16 Q. So was it concerning to the
17 board staff that 80 percent of the
18 respondents thought that they didn't have
19 adequate time to complete their jobs in a
20 safe and effective manner?

21 MR. HYNES: Objection. Form.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. ELSNER:

24 Q. And why?

25 A. Why was it concerning to us?

1 Q. Yes.

2 A. Well, certainly, you know, if
3 you've got 80 percent of pharmacists agreeing
4 on anything, it's concerning, but, you know,
5 particularly the fact that they felt like
6 they just didn't have enough time. I mean,
7 that was -- that was pretty constant
8 throughout the survey responses, but it
9 certainly raised the concern of how this
10 would then impact patient safety.

11 Q. Okay. You also organized this
12 information by large chain grocers, correct?

13 A. Yes.

14 Q. And there were 628 of the
15 thousand respondents who identified as large
16 chain grocery pharmacists that responded that
17 they either strongly disagreed or disagreed
18 that they had adequate time to complete their
19 job in a safe and effective manner, true?

20 MR. HYNES: Objection. Form.

21 THE WITNESS: Yes.

22 QUESTIONS BY MR. ELSNER:

23 Q. Okay. And as a result,
24 63 percent of those who responded in the
25 grocery store chain setting felt that they

1 didn't have adequate time to complete their
2 job in a safe and effective manner, true?

3 MR. HYNES: Objection. Form.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. ELSNER:

6 Q. Okay. And did you have similar
7 concerns with respect to the large grocery
8 chain stores as you did with respect to the
9 chain pharmacies?

10 MR. HYNES: Objection. Form.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. ELSNER:

13 Q. Let's go to question 3, if we
14 could.

15 And in question 3, the question
16 was, "I feel that my work environment has
17 sufficient pharmacist staffing that allows
18 for patient safety."

19 Was that the third question of
20 the survey?

21 A. Yes.

22 Q. Okay. And for large chain
23 standalone pharmacy respondents, 891 of the
24 1,268 pharmacists that answered the question
25 disagreed or strongly disagreed that their

1 environment had sufficient staffing to allow
2 for patient safety, true?

3 MR. HYNES: Objection. Form.

4 THE WITNESS: Yes, sufficient
5 pharmacist staffing.

6 QUESTIONS BY MR. ELSNER:

7 Q. Okay. So 70 percent of the
8 pharmacists that worked in the large chain
9 standalone pharmacies thought that the
10 environment did not allow for sufficient
11 pharmacist staffing to create a safe patient
12 environment, true?

13 A. Yes.

14 MR. HYNES: Objection. Form.

15 MS. GIANGIULIO: Objection.

16 Form.

17 QUESTIONS BY MR. ELSNER:

18 Q. If we look at the respondents
19 with respect to the large grocery store
20 chains, in this example, is it true that
21 64 percent of the pharmacists that completed
22 the survey working in large grocery store
23 chains thought that their environment did not
24 have sufficient staffing that allowed for
25 patient safety?

1 MR. HYNES: Objection. Form.

2 THE WITNESS: Yeah, 63.8.

3 QUESTIONS BY MR. ELSNER:

4 Q. And was this a concern of the
5 board, that respondents working in large
6 chain grocery stores and respondents working
7 in large chain pharmacies felt that they
8 didn't have sufficient pharmacist staffing to
9 allow for patient safety?

10 MR. HYNES: Objection. Form.

11 THE WITNESS: Yes, this was --
12 this data -- these data points were
13 very concerning to us.

14 QUESTIONS BY MR. ELSNER:

15 Q. And did the Board of Pharmacy
16 in the survey also ask about pharmacy
17 metrics?

18 A. Yes.

19 Q. What is your understanding of a
20 pharmacy metric?

21 A. So my understanding of a
22 pharmacy metric is that certain companies
23 will assign, you know, a certain number of
24 immunizations that need to be given or you
25 need to meet your fill times in a certain

1 percentage or you need to make certain -- so
2 essentially doing a certain amount of
3 administrative duties, you know, per day to
4 meet a number set by, you know, corporate.

5 Q. So the pharmacy metrics are not
6 set by individual pharmacists at each store;
7 they're set typically by the corporate
8 headquarters.

9 Is that true?

10 MR. HYNES: Objection. Form.

11 THE WITNESS: My understanding
12 is that it's not -- it's not in
13 control of the pharmacist that's
14 working there.

15 QUESTIONS BY MR. ELSNER:

16 Q. Okay. If we go to question 6,
17 did the survey ask whether pharmacists felt
18 pressure by their employers or supervisors to
19 meet standards or metrics that may interfere
20 with safe patient care?

21 A. Yes.

22 Q. Okay. And was it true that for
23 the large chain standalone pharmacies that
24 88 percent of those responding to the survey
25 thought that the metrics were -- may

1 interfere with safe patient care?

2 MR. HYNES: Objection. Form.

3 THE WITNESS: Yeah, the

4 87.78 percent.

5 QUESTIONS BY MR. ELSNER:

6 Q. Okay. And if we look at the
7 large chain grocery store respondents, it was
8 slightly lower but somewhat similar response
9 of 73 percent, 72.8 percent of the
10 pharmacists that worked in the large chain
11 grocery pharmacies throughout -- thought that
12 metrics may interfere with safe patient care.

13 Is that true?

14 MR. HYNES: Objection. Form.

15 THE WITNESS: Yes. Yes.

16 QUESTIONS BY MR. ELSNER:

17 Q. Now, were the results with
18 respect to this metrics question concerning
19 to you and members of the board?

20 MR. HYNES: Objection. Form.

21 THE WITNESS: Yes.

22 QUESTIONS BY MR. ELSNER:

23 Q. And why is that?

24 A. Again, it has to do with the
25 ability to provide safe patient care, which

1 was the focus of the survey.

2 Q. If we go to -- if we go to
3 question 7, did the board ask whether
4 pharmacists felt that the workload-to-staff
5 ratio allowed them to provide for patients in
6 a safe manner?

7 A. Yes.

8 Q. Okay. And what did you mean
9 by -- or what did the board mean by workload
10 in this question?

11 A. That the amount of work that
12 they had to the amount of staff that they had
13 allowed them to complete their tasks and do
14 so in a safe manner. Again, getting back to
15 the patient safety nexus.

16 Q. And is it true that the
17 responses here that 78 percent of --
18 78.47 percent of the pharmacists that worked
19 in large chain standalone pharmacies thought
20 that the workload-to-staff ratio was not
21 sufficient to provide patient care in a safe
22 manner?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: Yes, that's
25 correct.

1 QUESTIONS BY MR. ELSNER:

2 Q. And if we go to the next slide,
3 which is the response for large grocery chain
4 pharmacists, did 63 percent of those
5 pharmacists, 62.6 percent of those
6 pharmacists in large chain grocery store
7 pharmacies think that the workload-to-staff
8 ratio was not sufficient to provide patient
9 care in a safe manner?

10 MR. HYNES: Objection. Form.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. ELSNER:

13 Q. Did you feel, in response to
14 the survey, that you were getting fairly
15 consistent results with respect to these
16 questions concerning workload, metrics and
17 safe patient care?

18 MR. HYNES: Objection. Form.

19 THE WITNESS: Yes. Yeah. So
20 the numbers were pretty consistent.

21 QUESTIONS BY MR. ELSNER:

22 Q. And we won't go through all the
23 various questions, but was it also true that
24 a number of pharmacists working in large
25 chain pharmacies and grocery stores also felt

1 that they didn't have sufficient time to take
2 breaks, such as a lunch break?

3 MR. HYNES: Objection. Form.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. ELSNER:

6 Q. Okay. Why don't we look at
7 that response, if we could, and go to the
8 next slide.

9 For large chain grocery stores,
10 roughly 58 percent of the pharmacists who
11 worked in that environment felt that they
12 were not given the opportunity to take lunch
13 or otherwise take breaks throughout the day.

14 Is that true?

15 MR. HYNES: Objection. Form.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. ELSNER:

18 Q. Okay. And with respect to
19 large chain grocery stores, that response
20 was -- I'm sorry, with respect to large chain
21 pharmacies, over 81 percent of pharmacists
22 felt that they worked -- strike that.

23 With respect to large chain
24 pharmacies, 81 percent of the pharmacists
25 that responded to the survey thought that

1 they were not given an opportunity to take
2 lunch or otherwise take breaks throughout the
3 day.

4 Is that true?

5 MR. HYNES: Objection. Form.

6 THE WITNESS: Yeah, for those
7 standalone pharmacies, that's correct.

8 QUESTIONS BY MR. ELSNER:

9 Q. And was the failure to provide
10 adequate breaks to pharmacists a concern to
11 the Ohio Board of Pharmacy?

12 MR. HYNES: Objection. Form.

13 THE WITNESS: Yes. I think
14 it's concerning to us, because, again,
15 it gets back to the need to practice
16 effectively.

17 QUESTIONS BY MR. ELSNER:

18 Q. And was there a fear among the
19 Ohio Board of Pharmacy that if pharmacists
20 didn't have adequate time to take breaks,
21 including a lunch break, that it might lead
22 to errors in the dispensing of medications?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: I think that
25 there's concern that, you know,

1 fatigue and not being able to take
2 breaks could, in fact, lead to harm.
3 So that was certainly a concern.

4 QUESTIONS BY MR. ELSNER:

5 Q. I want to jump ahead here.
6 Was there an effort to try to
7 determine how many prescriptions pharmacists
8 were filling in a particular hour?

9 Was that one of the questions
10 that were asked by the survey?

11 A. We did ask them about
12 prescription volume, yeah.

13 Q. If we could show that question.
14 Actually, I think with respect
15 to this, if we could go to -- go back to
16 MR 4202 and look at page 28, Exhibit 10.

17 Mr. McNamee, does this chart
18 depict responses from pharmacists as to the
19 number of prescriptions that are processed by
20 hour?

21 A. Yes.

22 Q. Okay. And did you compile this
23 chart based on the survey responses in the
24 pharmacists workload survey of 2020?

25 A. Yes.

1 Q. Okay. And did you do your best
2 to make sure it was accurate and complete?

3 A. Yes.

4 Q. Okay. Is it true that most of
5 the -- most of the pharmacists that responded
6 to the survey in large chain grocery stores
7 were filling between 26 and a hundred -- and
8 over a hundred prescriptions in an hour?

9 MR. HYNES: Objection. Form.

10 THE WITNESS: Are you saying
11 the majority of the respondents?

12 QUESTIONS BY MR. ELSNER:

13 Q. Yes.

14 A. Yes, it appears that that is
15 the case.

16 Q. And so if we do the math there,
17 798 of the thousand pharmacists from large
18 chain, grocery stores responded that they
19 were 80 percent -- roughly 80 percent
20 responded that they filled, on average,
21 between 26 and over a hundred prescriptions
22 an hour, true?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MR. ELSNER:

2 Q. And if we look at large chain
3 standalones, between 26 and over a hundred
4 prescriptions an hour, 77 percent of
5 pharmacists responded that they filled that
6 many prescriptions in an hour, true?

7 MR. HYNES: Objection. Form.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. ELSNER:

10 Q. 26 prescriptions in an hour,
11 that would be one prescription every
12 2.3 minutes. And at 50 prescriptions an
13 hour, that would be one prescription every
14 1.2 minutes. And at a hundred prescriptions
15 an hour, that would be one prescription every
16 36 seconds.

17 Was there a concern at the
18 board as to the number of prescriptions that
19 were being filled at large chain pharmacies
20 and large chain grocery stores in the state
21 of Ohio?

22 MR. HYNES: Objection. Form.

23 MS. OCHMAN: Objection. Form.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MR. ELSNER:

2 Q. And would you agree with me
3 that the processing of a prescription
4 includes all of the steps necessary in order
5 to fill a prescription, that is intake and
6 through the entire process, labeling, due
7 diligence on the prescription, if that's
8 necessary, including calling a doctor,
9 counting out the medication, checking the
10 count on the medication, putting the
11 medication in a -- in a -- in a bottle,
12 bagging the medication, are all of those
13 steps included in the processing of a
14 medication?

15 MR. HYNES: Objection. Form.

16 THE WITNESS: Yes.

17 MR. HYNES: And scope.

18 QUESTIONS BY MR. ELSNER:

19 Q. Was there a concern at the Ohio
20 Board of Pharmacy that the number of
21 prescriptions that were being filled, the
22 staffing levels that existed in the pharmacy
23 and the metrics employed by large chain
24 pharmacies and large chain grocery stores
25 posed a risk to patient safety?

1 MR. HYNES: Objection. Form.

2 THE WITNESS: Yes.

3 QUESTIONS BY MR. ELSNER:

4 Q. And was there a risk -- I'm
5 sorry -- well, strike that.

6 Did the survey also ask, for
7 those who felt that they were unable to
8 practice safely at their current pharmacy,
9 why they felt that way?

10 A. Yes.

11 Q. Let's turn to page 32 of
12 MR 4202, and question 16, this question asks,
13 "If you believe you are unable to practice
14 safely at your current pharmacy practice
15 site, please select the reason why."

16 Was this the way the question
17 was framed in the workload survey?

18 A. Yes.

19 Q. And is it true that for the
20 majority of the respondents or the -- let me
21 strike that.

22 Is it true that the two main
23 leading causes for their feeling about their
24 inability to practice safely at the pharmacy
25 was a result of the focus on metrics and

1 inadequate staff support?

2 A. Yes.

3 MR. HYNES: Objection. Form.

4 QUESTIONS BY MR. ELSNER:

5 Q. Okay. And why did the board
6 ask this particular question in the survey?

7 A. I think this is actually from
8 Missouri, so we wanted to -- I think we were
9 also trying to keep it as close to Missouri
10 so we can maybe compare results between
11 states, but I believe that this was -- this
12 was from the Missouri survey, so we kept it
13 in because we wanted to identify, you know,
14 what the specific issues were. So, yeah,
15 that's why we kept it in the survey.

16 Q. Okay. And the third highest
17 here is also too many nonclinical duties such
18 as filling -- sorry, filing, prior
19 authorizations, making refill phone calls,
20 et cetera, true?

21 A. Yes.

22 Q. And were these concerns
23 expressed in this component of the survey
24 also consistent with the comments that were
25 received by the Ohio Board of Pharmacy in the

1 free comment section of the survey?

2 A. Yes.

3 Q. Okay. Why did the board decide
4 to include a free comment section in addition
5 to asking these questions in the survey?

6 A. I think we wanted to account
7 for anything that we weren't asking
8 specifically in the survey so -- and also,
9 you know, just being able to hear from the
10 pharmacists in their own words about what the
11 working conditions were like. So we felt it
12 appropriate to include an open response
13 option or a freeform option.

14 Q. And what was your reaction and
15 the reaction of the Ohio Board of Pharmacy
16 staff to the comment section of the survey
17 responses?

18 A. Concerning. Little
19 disheartening.

20 Q. Why was it disheartening?

21 A. You know, some of the comments
22 talked about how they dreaded going into the
23 practice of pharmacy because of the working
24 conditions, and it's always -- you know, it's
25 hard to hear people sort of talk about how,

1 you know, they had this dream and this goal
2 and it's turned out to be, you know, nothing
3 like they thought it would be. So that was
4 disheartening.

5 But, again, they -- the
6 comments, you know, often were -- felt like a
7 cry for help in many -- in many regards.

8 Q. Let's look at one. If we turn
9 to MR 4202, page 34.

10 If we look here at the
11 highlighted portion, it reads, does it not,
12 "Two hours is too long for a single
13 pharmacist to work. It's unsafe after about
14 an hour 10. Eye fatigue, brain fatigue and
15 not as fresh and alert as at the beginning of
16 the shift. Too many interruptions to focus
17 on just one task at a time. Cannot immunize
18 and fill over 300 prescriptions a day with
19 one RPh."

20 Did I read that correctly?

21 A. Yes.

22 Q. It then reads, "Due to retail
23 setting looking for profits, focus is on
24 filling as much and as fast as possible.
25 Safe is not a concern for the large

1 companies. Scheduling a break from 1:30 to 2
2 for lunch leaves a 12-hour pharmacist still
3 no dinner and no rest."

4 Is this an example of one of
5 the concerning responses that the Ohio Board
6 of Pharmacy received in response to the
7 workplace survey?

8 MR. HYNES: Objection. Form.

9 THE WITNESS: Yes.

10 QUESTIONS BY MR. ELSNER:

11 Q. Let me turn to page 36, and
12 there's two here on this page I would like to
13 focus on. The first one is the sixth one
14 down starting with "additional workloads."

15 It reads, "Additional workloads
16 and additional duties have put in place an
17 unsafe and very stressful environment in the
18 chain pharmacy I worked at until last fall.
19 Management continues to add workload without
20 additional help. We had a pharmacist leave
21 because she felt the work environment was
22 unsafe. I felt more like a factory with
23 quotas than it did working in a pharmacy."

24 Is this another one of the
25 comments that were received in response to

1 the workplace survey?

2 A. Yes.

3 Q. Okay. And was -- do you
4 believe that there were a significant number
5 of comments in response to the survey?

6 There weren't just a small
7 handful, true?

8 MR. HYNES: Objection. Form.

9 THE WITNESS: Yes, there were a
10 significant amount of comments that we
11 received.

12 QUESTIONS BY MR. ELSNER:

13 Q. Were you surprised by the large
14 number of comments that you received to the
15 survey?

16 MR. HYNES: Objection. Form.

17 THE WITNESS: Yes.

18 QUESTIONS BY MR. ELSNER:

19 Q. And were the comments generally
20 consistent with the results of the survey as
21 depicted in the numbers that we went through
22 at the beginning of this examination?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: Yeah, generally
25 they are consistent, the responses.

1 QUESTIONS BY MR. ELSNER:

2 Q. If we go two down, it starts,
3 "After 20 years of working at the same retail
4 pharmacy and being asked to do more and more,
5 MTMs, vaccines, prescription sharing,
6 et cetera, with inadequate ancillary help, I
7 recently decided to step away from the
8 pharmacy completely. My main, in all caps,
9 reason was because I did not feel safe. The
10 environment was set up for me to fail, and it
11 was only a matter of time before I made a
12 horrific mistake."

13 Did I read that correctly?

14 A. Yes.

15 Q. And were comments like these a
16 concern at the Ohio Board of Pharmacy in
17 response to this survey?

18 A. Yes.

19 Q. And was there a concern at the
20 Ohio Board of Pharmacy that the workplace
21 condition with pharmacists in Ohio could
22 potentially be posing a danger to the public?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MR. ELSNER:

2 Q. There were also some specific
3 comments made by employees and former
4 employees of the defendants in this case.

5 Is that true?

6 A. Yes, we often found that
7 people, even if they went into settings that
8 were more conducive, like an independent,
9 they still answered on behalf of where they
10 used to work, which is a chain setting.

11 Q. And we'll look at some of
12 those.

13 And frequently in that -- in
14 the responses they commented that their
15 responses in the first part of the survey
16 would have been different had they answered
17 based on where they used to work versus where
18 they currently work, true?

19 MR. HYNES: Objection. Form.

20 THE WITNESS: Yes.

21 QUESTIONS BY MR. ELSNER:

22 Q. I'm sorry, I didn't hear the
23 response.

24 A. Oh, I'm sorry. Generally, yes.
25 Yeah.

1 Q. If we look at 4202 on page 63,
2 top response, "I believe that every retail
3 pharmacist skips procedures and tries to find
4 the quickest way of doing something because
5 there is such a lack of staffing and the
6 staff that we do have is underpaid for the
7 type of stress they deal with. District
8 managers quickly have an answer for
9 everything and do not realize that patient
10 care is at a loss. Retail pharmacy has lost
11 touch of what it used to be in years past.
12 The" -- sorry, I can't quite read that on the
13 screen the way it's depicted -- "the amount
14 of corporate pressure put on managers does
15 not allow for quality patient care. It took
16 Walgreens 100 years to finally implement a
17 lunch break pilot. I received my first lunch
18 break last week in seven years, and I -- in
19 the seven years I have been a pharmacist."

20 Is this consistent with some of
21 the comments that you were referring to
22 earlier related to a breakdown in the
23 respondents' feelings about the practice of
24 pharmacy in Ohio?

25 MR. HYNES: Objection. Form.

1 MS. OCHMAN: Objection to form.

2 THE WITNESS: Yes.

3 QUESTIONS BY MR. ELSNER:

4 Q. If we look at page 39, we look
5 at a comment related to CVS pharmacists.

6 And if we go to the second
7 comment there, "As a collective group of
8 several pharmacists and pharmacy managers, we
9 have expressed concerns to our district
10 managers with the hope that they would try to
11 accomplish changes to bring about a safer
12 work experience. Instead, the opposite has
13 occurred, as we have now been faced with
14 additional cuts in technician and pharmacy
15 staffing, plus an increased push for
16 vaccinations and patient outreach. CVS
17 continues to show a blatant disregard for
18 patient or employee safety as pharmacists are
19 not even allowed a formal meal break per
20 company policy."

21 Did I read that correctly?

22 A. Yes.

23 Q. And was this the concern of the
24 board, that large chain pharmacies like CVS
25 were inadequately staffed and not providing

1 for appropriate breaks?

2 MR. HYNES: Objection. Form.

3 THE WITNESS: Yeah, I think
4 generally there was a concern across
5 all of the large chain settings based
6 on the data that we saw in the survey.

7 QUESTIONS BY MR. ELSNER:

8 Q. And this person goes on, "They
9 continue to demand more from fewer people at
10 each store and stress money and sales over
11 patient health or safety. Everything
12 expressed and revealed in The New York Times
13 article from the beginning of the year was,
14 in fact, true, has resumed, and has resumed
15 with a stronger presence and emphasis from
16 field management and corporate. They are
17 going to get someone seriously injured or
18 worse in this state all for the sake of extra
19 profits."

20 Did I read that correctly?

21 A. Yes.

22 Q. I want to look also on page 39.
23 If we go down a little bit further, the
24 second to the last comment, "As a pharmacy
25 manager" -- second to the last one on the

1 page.

2 "As a pharmacy manager, it's
3 frightening how little control over staffing
4 I have. It is all dictated by our corporate
5 office. Although my name is on the
6 pharmacy's license, I truly am not the person
7 in charge when it comes to this aspect of
8 safely operating a pharmacy."

9 Did I read that correctly?

10 A. Yes.

11 Q. Did the board feel it was
12 important for the pharmacist in charge in the
13 pharmacies in Ohio to be in control of the
14 work environment at each of their pharmacies?

15 MR. HYNES: Objection. Form.

16 THE WITNESS: Yes, that's the
17 expectation of our role.

18 QUESTIONS BY MR. ELSNER:

19 Q. Okay. And is this comment
20 consistent with the testimony you offered
21 earlier that corporate decisions were
22 impacting pharmacy practice at individual
23 pharmacies?

24 MR. HYNES: Objection. Form.

25 THE WITNESS: Yes, and based

1 off of -- and that is based off of the
2 survey data, yes.

3 QUESTIONS BY MR. ELSNER:

4 Q. And we talked about metrics a
5 little bit earlier when we were looking at
6 the numerical responses to the survey, and I
7 would just like to turn to page 47 of the
8 survey.

9 I want to focus on the seventh
10 comment that starts with "currently," but I
11 want to -- I want to go to the end of that
12 line where the respondent writes, "I do want
13 to point out" -- yeah -- "I do want to point
14 out several years ago I worked at CVS, and
15 that was the worst experience I had as a
16 retail pharmacist. Too much focus on metrics
17 and each prescription ends up not being given
18 due attention. Extreme workload, corporate
19 pressure, low staff resulted in pharmacist
20 having not even five minutes a day of ten
21 hours to eat. It's time someone stopped CVS
22 making a factory out of pharmacy."

23 Did I read that correctly?

24 A. Yes.

25 Q. Okay. Now, we've selected some

1 comments over the course of this examination.

2 I'm certainly not going to read them all.

3 Are these comments fairly
4 consistent across the respondents in the
5 survey, that people are expressing concern
6 about metrics, expressing concern about
7 workload and expressing a concern about
8 patient safety in the chain pharmacy and
9 chain grocery settings in Ohio?

10 MR. HYNES: Objection. Form.

11 MS. OCHMAN: Objection to form.

12 QUESTIONS BY MR. ELSNER:

13 Q. Mr. McNamee, I didn't hear your
14 answer.

15 A. Oh, sorry. Yes.

16 Q. We had talked a little bit
17 earlier about former pharmacists, and this is
18 one example of someone who is in a different
19 environment now and commenting on where they
20 used to work.

21 I wanted to also look at
22 comment 86 -- comment on page 86 begins, "I
23 used to work for CVS Pharmacy" in the third
24 comment there.

25 "I used to work for CVS

1 Pharmacy. My answers would be drastically
2 different if I were filling out this survey
3 from that perspective, instead of the job I
4 have now. CVS did not give me an opportunity
5 for a break or time to eat lunch. At CVS I
6 felt unsafe with the metric demands and the
7 short staffing ratios that corporate handed
8 down. If I still worked for CVS, I had to
9 answer question 16 of the survey, and checked
10 every single box because I felt unsafe for
11 all of these reasons."

12 Does this response indicate
13 that the survey results numerically in the
14 beginning of the survey may have been higher
15 had the respondents answered with respect to
16 their former employment?

17 MR. HYNES: Objection. Form.

18 THE WITNESS: Potentially;
19 although, you know, I can't -- I can't
20 speculate on sort of hypotheticals
21 there.

22 QUESTIONS BY MR. ELSNER:

23 Q. At least for this respondent
24 and the response that we read just before
25 this that would be true, correct?

1 MR. HYNES: Objection. Form.

2 THE WITNESS: Yes, if they were
3 answering based on their previous
4 employer, that would be the case,
5 correct.

6 QUESTIONS BY MR. ELSNER:

7 Q. And if we look at page 86, at
8 the top of the page, a very similar response
9 from a former Walgreens pharmacist, "I used
10 to work at Walgreens up until this year. If
11 I was still employed there, my answer would
12 be drastically different."

13 True?

14 A. Yes.

15 Q. Okay. And it reads, "I never
16 got a lunch break, a bathroom break or any
17 break. I was forced to work unpaid hours,
18 had terrible staffing due to restrictions in
19 budget. I worked with one other pharmacist,
20 and we would process over a thousand scripts
21 in a day."

22 Did I read that correctly?

23 A. Yes.

24 Q. Okay. And so this would be
25 another example of a pharmacist, if they had

1 answered the numerical section of the
2 response based on their prior employer versus
3 their current one, they would have indicated
4 an increase in the concerns we raised before,
5 true?

6 MR. HYNES: Objection. Form.

7 THE WITNESS: Yes, that is
8 correct.

9 QUESTIONS BY MR. ELSNER:

10 Q. Okay. I want to look at
11 page 152, the very top response, and I want
12 to start with the second sentence beginning
13 with "this Kroger's -- "this is Kroger, and
14 the workload is unrealistic and unsafe. The
15 work environment is creating a whole new
16 generation of sloppy pharmacists that are
17 sometimes flat-out dangerous. We are timed
18 on every move we make. Safety and ethics are
19 out the door."

20 Did I read that correctly?

21 A. Yes.

22 Q. "Retail pharmacy has
23 dramatically changed in the last five years
24 or so. MTM" -- and then it -- "MTM outcomes
25 is definitely a positive thing, but it has

1 turned into a game of numbers in retail.
2 We're not taking care of the patient. We're
3 taking care of profits, metrics, inventory
4 and the bottom line."

5 Is it true that the frustration
6 expressed by pharmacists in large chain
7 pharmacies -- standalone pharmacies was also
8 expressed by some respondents in large chain
9 grocery store settings?

10 A. Yes.

11 Q. After the survey, did you
12 prepare a presentation of the survey results
13 to share with -- well, did you prepare survey
14 results to share?

15 A. Yes. Yes.

16 (McNamee Exhibit 11 marked for
17 identification.)

18 QUESTIONS BY MR. ELSNER:

19 Q. Okay. I want to show you --
20 pull up MR 4210, and we'll mark this as the
21 next exhibit. This is Exhibit 11.

22 Mr. McNamee, was this the
23 pharmacists workload survey results
24 PowerPoint that you put together for the
25 pharmacists workload advisory committee on

1 October 14, 2021?

2 A. Yes.

3 Q. Okay. And did you prepare this
4 in the regular course of your business?

5 A. Yes.

6 Q. Okay. And did you ensure --
7 did you make every effort to ensure that what
8 you were reporting here was accurate and
9 complete?

10 A. Yes.

11 Q. You conclude that some
12 information on the survey demographics?

13 If we turn to page 3, "The
14 survey was sent in July of 2020 to all
15 pharmacists working in Ohio. It was sent to
16 11,588 pharmacists with 4,159 pharmacists
17 completing the survey."

18 Is that true?

19 A. Yes.

20 Q. Okay. And did that reveal a
21 completion rate of 26.41 percent?

22 MR. HYNES: Objection. Form.

23 THE WITNESS: Yes.

24 QUESTIONS BY MR. ELSNER:

25 Q. And did the board feel that

1 that completion rate was sufficient to
2 publish these results and to create a
3 workload pharmacy committee as a result?

4 MR. HYNES: Objection. Form.

5 THE WITNESS: Yes.

6 QUESTIONS BY MR. ELSNER:

7 Q. Okay. Were you -- and about
8 54 percent of the pharmacists you indicate
9 here working in large chain pharmacies,
10 standalone or large chain pharmacy grocers
11 responded to the survey.

12 Is that right?

13 A. Yes.

14 Q. Okay. And so when we're
15 talking about different practice locations,
16 would you agree that CVS would fall under the
17 standalone setting?

18 A. Yes.

19 Q. Okay. And Walgreens would also
20 be a standalone setting.

21 A. Yes.

22 Q. And Kroger would be a grocery
23 store -- grocery setting.

24 Is that true?

25 A. Yes.

1 Q. Okay. And are Meijer and
2 Walmart, are they respondents in a grocery
3 store setting as well?

4 A. Yes.

5 Q. Or -- okay.

6 Did the board have any concerns
7 about the reliability or adequacy of the
8 survey results?

9 A. No.

10 Q. And, in fact, the board felt
11 that the survey results were reliable enough
12 to share them with the governor of the state
13 of Ohio, true?

14 MR. HYNES: Objection. Form.

15 THE WITNESS: Yes. Yes.

16 QUESTIONS BY MR. ELSNER:

17 Q. I'm about ready to go into a
18 new document. Would you like me to press on,
19 or would you like to take a short break?

20 A. I can go on.

21 (McNamee Exhibit 12 marked for
22 identification.)

23 QUESTIONS BY MR. ELSNER:

24 Q. Let's pull out MR 4209, which
25 we'll mark as Exhibit 12.

1 And, Mr. McNamee, do you
2 recognize Exhibit 12?

3 A. Yes.

4 Q. Okay. And is this an e-mail
5 that you sent to the governor's office, the
6 subject being the workload survey and
7 proposed committee structure?

8 A. Yeah.

9 Q. Okay. And was the purpose of
10 sharing this information with the governor's
11 office to seek permission for the creation of
12 the workload advisory committee?

13 A. I think it was just to run any
14 concerns that we may have by them. It's
15 not -- it wasn't necessarily asking for
16 permission, but just trying to identify if
17 they had any concerns about the board with
18 this -- with the way we wanted to proceed in
19 examining this issue.

20 Q. And in revealing the results of
21 the survey to the governor's office, is it
22 true that you characterized those results as
23 striking?

24 A. Possibly. I don't recall.

25 Q. If we go to page 7 -- 177 of

1 this document. And we look under Issue in
2 the third paragraph here it says, "The data
3 revealed in this" -- sorry, just the third
4 paragraph there.

5 "The data revealed in this
6 survey is striking, appended to the document.
7 For example, almost half of the survey
8 respondents, 49 percent, indicated that they
9 did not have adequate time to complete their
10 job in a safe and effective manner. The
11 survey also found that 57 percent of the
12 pharmacists reported they felt pressure by
13 their employer or supervisor to meet
14 standards or metrics that may interfere with
15 safe patient care."

16 Did I read that correctly?

17 A. Yeah.

18 Q. What did you mean here when you
19 used the word "striking" with respect to the
20 data responses to the workload survey?

21 A. Essentially that there was --
22 you know, the data presented a considerable
23 issue, and so that's why it was -- it was
24 pretty striking to myself, as well as the
25 staff, when we reviewed it.

1 Q. Okay. And the -- you also
2 indicated to the governor's office the
3 regulatory rules with respect to pharmacy
4 practice that might be implicated and the
5 reason to support the creation of a
6 pharmacist workload advisory committee.

7 Is that true?

8 MR. HYNES: Objection. Form.

9 THE WITNESS: Yes.

10 QUESTIONS BY MR. ELSNER:

11 Q. Okay. And let's look at
12 those -- are those rules that you thought may
13 be implicated contained at the top of this
14 document?

15 A. Yes.

16 Q. Okay. And it reads there that,
17 "The State of Ohio Board of Pharmacy proposes
18 the creation of a pharmacist workload
19 advisory committee to ensure compliance with
20 the following Ohio laws and rules."

21 And then you -- and then you
22 cite two there. The first, 4729.55, which
23 states, "Adequate safeguards are assured that
24 the applicant will carry on the business of a
25 terminal distributor of dangerous drugs in a

1 manner that allows the pharmacists and
2 pharmacy interns employed by the terminal
3 distributor to practice pharmacy in a safe
4 and effective manner."

5 Is that correct?

6 A. Yes.

7 Q. Okay. And was there a concern
8 at the Ohio Board of Pharmacy based on the
9 results of the survey that there might be
10 pharmacies that were not in compliance
11 potentially with this code provision?

12 MR. HYNES: Objection. Form.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. ELSNER:

15 Q. And you also cite a second rule
16 here, that "the pharmacy appropriately" --
17 "shall be appropriately staffed to operate in
18 a safe and effective manner."

19 Was this also a concern at the
20 Ohio Board of Pharmacy, that there might be
21 pharmacies in Ohio, based on the results of
22 the pharmacists survey, that were not
23 operating in a safe and effective manner
24 based on inappropriate staffing levels?

25 MR. HYNES: Objection. Form.

1 THE WITNESS: Yes, based on the
2 survey.

3 QUESTIONS BY MR. ELSNER:

4 Q. Okay. And based on the survey,
5 and this obligation that the board holds to
6 uphold these regulations, it was the
7 recommendation of the board to create a
8 workload advisory committee.

9 Is that true?

10 A. Yes.

11 Q. Okay. And you've looked at the
12 results of the Missouri survey. You've
13 looked at the New York Times article. You
14 looked at the Chicago Tribune article. You
15 looked at survey results from the American
16 Pharmacists Association.

17 Were the results that you
18 received in Ohio consistent with the results
19 that you were reading about on a national
20 basis?

21 MR. HYNES: Objection. Form.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. ELSNER:

24 Q. Did the governor have any
25 objection to the creation of forming an

1 advisory committee?

2 A. I can't speak for the governor,
3 but his staff didn't have any concerns.

4 Q. Okay. So the governor's office
5 didn't object to the creation of a pharmacist
6 workload advisory committee.

7 Is that true?

8 A. No, they did not object.

9 Q. Okay. Did you receive any
10 feedback or response from the governor's
11 office in response to the survey results
12 which you provided to them?

13 A. I don't believe so. I think
14 they just said, "No, that's fine," and
15 just -- you know, they didn't have any
16 issues, I guess.

17 Q. Okay. Did any members of the
18 board have any objection to the creation of a
19 pharmacist workload committee?

20 A. No, not that I recall.

21 (McNamee Exhibit 13 marked for
22 identification.)

23 QUESTIONS BY MR. ELSNER:

24 Q. You -- we took a look at the
25 presentation that you showed during the

1 October 14, 2021, meeting. If we can pull
2 out MR 4212.

3 Are these minutes of the
4 pharmacist workload advisory committee dated
5 October 14, 2021?

6 A. Yes.

7 Q. Okay. And it lists here the
8 members of the workload advisory committee.

9 Is that true?

10 A. Yes, those that were in
11 attendance.

12 Q. Okay. And do you participate
13 in committee meetings personally?

14 A. Yes.

15 Q. Okay. And the members of the
16 advisory committee include a pharmacy manager
17 from Walmart.

18 Is that true?

19 A. Yes.

20 Q. And actually, two pharmacy --
21 and a pharmacy manager from Walgreens.

22 Is that right?

23 A. Yes.

24 Q. And a pharmacy tech from
25 Walmart.

1 A. Yes.

2 Q. And a vice president from
3 Rite Aid.

4 A. Yes.

5 Q. Does it include John Long, the
6 director of pharmacy regulatory affairs at
7 CVS.

8 Is that right?

9 A. Yes.

10 Q. And Ryan Davis, the health and
11 wellness leader from Kroger, true?

12 A. Yes.

13 Q. And so on the advisory
14 committee sit employees of some of the
15 defendants in this action, true?

16 A. Yes.

17 Q. Is it true that the National
18 Association of Chain Drug Stores made
19 recommendations to the board to fill three of
20 the seats on the advisory committee?

21 MR. HYNES: Objection. Form.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. ELSNER:

24 Q. And in response to that
25 request, they filled the seats with employees

1 of chain pharmacies, true?

2 MR. HYNES: Objection. Form.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. ELSNER:

5 Q. Okay. And do you know which
6 ones?

7 A. John Long, Bimal Dassani and I
8 believe Ryan Davis.

9 Q. So Ryan Davis, who works at
10 Kroger; John Long who works at CVS.

11 And do you know who the third
12 person was?

13 A. Bimal Dassani.

14 Q. Bimal Dassani who works at Rite
15 Aid, true?

16 A. Yes.

17 Q. Okay. Whose idea was it to ask
18 the National Association of Chain Drugstores
19 to select members of the advisory committee?

20 A. It was the board's decision.

21 Q. And are there members of the
22 Board of Pharmacy in Ohio that work for chain
23 drugstores in Ohio?

24 A. Yes.

25 Q. Which ones?

1 A. Now or at the time that the
2 committee was created?

3 Q. At the time of the committee
4 being formed.

5 A. We had representation from the
6 chains. We had representation from Meijer,
7 CVS and Walgreens.

8 Q. And so it was those board
9 members who made the decision to ask the
10 National Association of Chain Drug Stores to
11 recommend members of this committee, true?

12 MR. HYNES: Objection. Form.

13 MR. HARRIS: Object to form.

14 THE WITNESS: They ultimately
15 blessed that idea; although we -- the
16 staff actually came up with that
17 recommendation.

18 QUESTIONS BY MR. ELSNER:

19 Q. Okay. So it was a staff
20 recommendation that the NACDS would recommend
21 members for the advisory committee.

22 Is that what --

23 A. Yes, that the board ultimately
24 approved that staff recommendation.

25 Q. And there's mention in the

1 minutes -- can we go back to MR 4210, if we
2 could, which is the presentation that you've
3 prepared? It's Exhibit 11.

4 And is this a PowerPoint
5 presentation that you gave to the pharmacy
6 workload advisory survey -- sorry, let me
7 strike that.

8 Is this a presentation that you
9 gave to the pharmacist workload advisory
10 committee?

11 A. Yes.

12 Q. Okay. If we could turn to --
13 well, let me ask you this.

14 One of the points you shared
15 with the committee was that the majority of
16 people in chain drugstores and grocery stores
17 did not feel safe voicing any workload
18 concerns with their employers.

19 Is that true?

20 A. Yes, that's what the survey
21 revealed.

22 Q. Okay. And if we could turn to
23 page 10 of the PowerPoint deck.

24 And so the results of the
25 survey confirmed your fear that there might

1 be concerns about those responding to the
2 survey in retribution from their employers in
3 responding to the survey, correct?

4 MR. HYNES: Objection. Form.

5 MS. OCHMAN: Objection. Form.

6 THE WITNESS: Yes.

7 QUESTIONS BY MR. ELSNER:

8 Q. And, in fact, this indicates
9 that for those in a large chain pharmacy
10 setting, 592 of the respondents strongly
11 disagreed that they felt safe voicing
12 workload concerns to their employer and 345
13 of those respondents disagreed.

14 True?

15 A. Yes.

16 Q. And similarly, for those
17 working in grocery stores, although at a much
18 lower level, 576 respondents either said that
19 they disagreed or strongly disagreed that
20 they felt safe voicing any workload concerns
21 to their employers.

22 Is that right?

23 A. Yes.

24 Q. If we turn --

25 MS. OCHMAN: I'm sorry, court

1 reporter, did you catch the objection
2 by Mr. Hynes?

3 MR. ELSNER: I'm happy to have
4 his objection noted for the record.

5 QUESTIONS BY MR. ELSNER:

6 Q. If we could turn to slide 34.

7 Can you describe for me what
8 you're depicting here and why you put
9 together this component of the PowerPoint?

10 A. Yes. So this was an attempt to
11 break down some of the identified issues so
12 we can tackle them as a group. So trying to
13 sort of separate them out into different
14 buckets to look at policies to address each
15 issue.

16 So it was kind of a way to try
17 and organize the work of the committee at a
18 meeting.

19 Q. And for each of these topics,
20 did you include a quote from the comments of
21 the survey so that those on the committee
22 would see some of the -- some of the comments
23 you're referring to as they relate to each
24 topic?

25 MR. HYNES: Objection. Form.

1 THE WITNESS: I believe I did.

2 QUESTIONS BY MR. ELSNER:

3 Q. Okay. And if we go to page 35,
4 bucket 1 is on scheduled breaks, and it
5 reads, "My largest concern is working a
6 13-hour shift as the only pharmacist that day
7 with no scheduled lunch breaks, and I often
8 feel guilty for sitting down for 15 minutes
9 to eat lunch and dinner throughout the day."

10 Did I read that correctly?

11 A. Yes.

12 Q. Okay. Was there a reaction
13 from the board to the concern about scheduled
14 breaks as reflected in the responses of
15 pharmacists in the survey?

16 MR. HYNES: Objection. Form.

17 THE WITNESS: There was no -- I
18 don't think there was a -- I don't
19 recall a specific reaction or
20 statement that they made in relation
21 to breaks. So I can't speak
22 specifically to that.

23 QUESTIONS BY MR. ELSNER:

24 Q. Were you aware before the
25 survey results came back and was the board's

1 staff aware that pharmacists were being asked
2 to work 13-hour shifts with no lunch breaks
3 or any other kinds of breaks?

4 A. I can't -- I don't recall, you
5 know, hearing a specific time frame. I do
6 know that I've heard, you know, anecdotally
7 that breaks are hard to come by, particularly
8 for, like, bathroom breaks or even eating
9 lunch.

10 Q. And would you agree that that
11 failure to offer people an adequate break
12 poses a potential risk to patient safety?

13 MR. HYNES: Objection. Form.

14 MS. OCHMAN: Objection.

15 THE WITNESS: Potentially,
16 yeah.

17 QUESTIONS BY MR. ELSNER:

18 Q. Okay. And was that a concern
19 of the board?

20 MR. HYNES: Objection. Form.

21 THE WITNESS: Yeah, any time
22 something would negatively impact
23 patient care, that's the concern of
24 the board.

25

1 QUESTIONS BY MR. ELSNER:

2 Q. There was also a frustration
3 expressed with the various non-dispensing
4 duties, if we go to the next slide.

5 What is meant by non-dispensing
6 duties?

7 A. So these are responsibilities
8 likes vaccinations or even medication therapy
9 management, essentially anything that doesn't
10 involve the actual dispensing of a
11 prescription drug.

12 Q. And is it fair to say that in
13 the comments, the pharmacists reflected on
14 frustration with having to engage in a large
15 number of duties and responsibilities in the
16 practice of pharmacy that extended beyond
17 patient-centered health care?

18 MR. HARRIS: Objection. Form.

19 THE WITNESS: Can you -- can
20 you qualify patient-centered health
21 care?

22 Because vaccines and MTM would
23 be considered patient-centered.

24 QUESTIONS BY MR. ELSNER:

25 Q. Well, let's start with the

1 comment here.

2 The first comment here is, "The
3 pharmacy has gone away from a patient-
4 centered true health care profession. It's
5 now like any other business with a focus on
6 doing as much as possible with as little help
7 as possible. The focus on metrics only makes
8 things worse, and then add in non-dispensing
9 roles like vaccines and MTMs with their
10 metrics, and it adds more undue stress to an
11 already stressful profession."

12 True?

13 A. Yeah, that's the statement we
14 received.

15 Q. Okay. And that's a statement
16 that was taken from the responses to the
17 survey.

18 Is that right?

19 A. Yes.

20 Q. Okay. You're aware, are you
21 not, that there are other non-dispensing
22 duties that pharmacists in large chain
23 grocery stores and large chain pharmacies are
24 expected to also undertake, such as filing
25 and answering phone calls and generating

1 business and all sorts of other metrics and
2 business activities that are measured by
3 these companies.

4 Are you aware of that?

5 MR. HYNES: Objection. Form.

6 THE WITNESS: Yes.

7 QUESTIONS BY MR. ELSNER:

8 Q. If we go to bucket 3, there's a
9 mention here of pharmacist and technician
10 staffing.

11 Was that also a concern of the
12 board?

13 MR. HYNES: Objection. Form.

14 THE WITNESS: Yes.

15 QUESTIONS BY MR. ELSNER:

16 Q. And if we go to the bottom
17 comment there, "Because of a lack of support
18 staff, I generally spend about 80 percent of
19 my day doing tasks technicians are allowed to
20 do on type of pharmacists tasks, answering
21 phone calls, data entry, filling and ringing
22 out customers. It is an unsafe environment
23 when I have to type most prescriptions I
24 check with no other eyes on them."

25 Do you see that?

1 A. Yes.

2 Q. And is that a comment from the
3 survey?

4 A. Yes.

5 Q. Okay. And did the board feel
6 that there was a danger when pharmacists were
7 working by themselves and having to perform
8 all of these various functions not to have a
9 second set of eyes on the filling of
10 prescriptions in the pharmacy?

11 MR. HYNES: Objection. Form.

12 THE WITNESS: I think generally
13 the data showed that there were --
14 there was a lack of adequate staffing,
15 which does negatively impact the
16 ability of a pharmacist to complete
17 all of those tasks safely.

18 QUESTIONS BY MR. ELSNER:

19 Q. And you also identified for the
20 committee the fourth bucket on the next page,
21 which is metrics, and we've discussed that
22 before.

23 If we go to the bottom, it
24 reads, "Company focus on metrics makes the
25 current practice of pharmacy unsafe and

1 results in high-risk errors."

2 Was there a reaction from the
3 members of the committee to the comments
4 related to the use of metrics in retail chain
5 pharmacies and retail grocery chain
6 pharmacies -- chain grocery stores?

7 MR. HYNES: Objection. Form.

8 THE WITNESS: I can't recall
9 specific comments.

10 QUESTIONS BY MR. ELSNER:

11 Q. Was there a concern among the
12 staff level that metrics, as they're
13 currently being used in the pharmacy setting,
14 may pose a risk to patient health and safety
15 and may result in a risk of errors at the
16 pharmacy?

17 A. Yes.

18 Q. The next bucket describes
19 prescription volume.

20 Can you explain to us what that
21 means?

22 A. That would mean the number of
23 prescriptions the pharmacist dispenses in a
24 given day.

25 Q. And if we look at the first

1 comment, second sentence, "The quantity of
2 prescriptions expected of each pharmacist per
3 day is unsafe and unrealistic and mistakes
4 are made due to the speed with which
5 pharmacists must perform tasks to stay at
6 goal and keep their job."

7 Did I read that correctly?

8 A. Yes.

9 Q. And is that a response to the
10 survey from a pharmacist in Ohio?

11 A. Yes.

12 Q. Okay. Was there a reaction
13 to -- from the workload committee concerning
14 prescription volume?

15 MR. HYNES: Objection. Form.

16 MS. OCHMAN: Objection to form.

17 THE WITNESS: So we were --
18 obviously there was some -- there was
19 some discussion in the committee
20 regarding all of these issues, but in
21 terms of prescription volume, I do
22 recall specifically because of COVID
23 that there were increasing concerns
24 among the committee members about
25 their ability to handle the

1 prescription volume.

2 QUESTIONS BY MR. ELSNER:

3 Q. Okay. There was a discussion
4 at this meeting related to a variety of
5 topics, some of which you highlight here, and
6 also a discussion about conducting a second
7 survey.

8 Is that true?

9 A. Yes.

10 Q. And did the board -- did the
11 board, in fact, create and disseminate a
12 second pharmacist's survey in Ohio?

13 A. Yes.

14 Q. Okay. And were you involved in
15 the follow-up survey?

16 A. Yes.

17 MR. ELSNER: And why don't we
18 go off the record a minute.

19 VIDEOGRAPHER: The time right
20 now is 11:36 a.m. We're off the
21 record.

22 (Off the record at 11:36 a.m.)

23 VIDEOGRAPHER: The time right
24 now is 11:50 a.m. We're back on the
25 record.

1 QUESTIONS BY MR. ELSNER:

2 Q. Mr. McNamee, is it true that
3 the -- well, did the Ohio Board of Pharmacy
4 send out any other additional surveys related
5 to workload issues in the state of Ohio?

6 A. Yes.

7 Q. And when did it do that?

8 A. November of 2021.

9 Q. Okay. November of 2021, is
10 that what you said?

11 A. Yes.

12 Q. Okay. And was the process used
13 for sending out the November 2021 survey the
14 same as the process used with the 2020
15 survey?

16 A. We used a different method --
17 we used a different program to collect it,
18 but generally, yeah, it followed the same
19 parameters as our first survey.

20 Q. Was the survey e-mailed to all
21 pharmacists in Ohio?

22 A. Yes.

23 Q. Was the survey anonymous in
24 2021 like it was in 2020?

25 A. Yes.

1 Q. Was the survey sent by a secure
2 electronic link in 2021 as it was in 2020?

3 MR. HYNES: Objection. Form.

4 THE WITNESS: Yeah, the link
5 was sent out to the -- to the
6 pharmacist.

7 QUESTIONS BY MR. ELSNER:

8 Q. Okay. Was there any feedback
9 you received or evidence you received that
10 the results to the 2021 survey where there
11 was fraud or misconduct with respect to the
12 survey responses?

13 Sorry, I didn't hear you.

14 A. No.

15 Q. Okay. And were you personally
16 involved in reviewing the responses to the
17 2021 survey?

18 A. Yes.

19 (McNamee Exhibit 14 marked for
20 identification.)

21 QUESTIONS BY MR. ELSNER:

22 Q. Okay. I'm going to mark as the
23 next exhibit MR 4201, which is Exhibit 12 --
24 sorry, Exhibit 14.

25 Do you recognize this document,

1 Exhibit 14, Mr. McNamee?

2 A. Yeah.

3 Q. What is it?

4 A. It's the results of our 2021
5 pharmacist workload survey.

6 Q. Okay. And are these the
7 official results of the survey?

8 A. Yes.

9 Q. And are the results accurate
10 and complete?

11 A. Yes.

12 Q. Are they publicly available?

13 A. Yes.

14 Q. Are they also contained on the
15 Board of Pharmacy's website?

16 A. Yes.

17 Q. Is this an official report from
18 the State of Ohio Board of Pharmacy?

19 A. Yes.

20 Q. In compiling the responses to
21 the survey and the comments, were there any
22 changes made or anything deleted before it
23 was published in Exhibit 14?

24 A. Not that I can recall, no.

25 Q. Okay. Were there any comments

1 that you just completely omitted or threw out
2 or chose not to include in the response to
3 the survey?

4 A. No.

5 Q. Was there -- did you make any
6 efforts -- strike that.

7 Okay. If we can turn to
8 page 4 -- sorry, page 3 of the survey, my
9 apologies.

10 Is it true that -- well, let me
11 ask this.

12 Who were the largest group of
13 respondents to the 2021 survey?

14 A. Those are the representatives
15 from the large chain grocery and the large
16 chain standalone.

17 Q. And would you agree -- well,
18 were the results of the 2021 survey
19 consistent or inconsistent with the results
20 of the 2020 survey?

21 MR. HYNES: Objection. Form.

22 MS. OCHMAN: Objection.

23 THE WITNESS: They were
24 consistent in that they continue to
25 show that there was an issue with

1 working conditions.

2 QUESTIONS BY MR. ELSNER:

3 Q. And were there instances in
4 which the results of the 2021 survey were
5 worse than the 2020 survey?

6 MR. HYNES: Objection. Form.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. ELSNER:

9 Q. Let's look at one of the
10 responses. If we start with question 2, and
11 if we -- sorry. Actually, go to the next
12 page, on page 6. In response to this
13 question -- I'm sorry, let's go a little
14 further to page 7, I'm sorry.

15 In response to the question, "I
16 feel I have adequate time to complete my job
17 in a safe and effective manner," how did the
18 respondents from the large chain grocery
19 stores respond?

20 A. So a majority strongly
21 disagreed or disagreed.

22 Q. Okay. And so does that mean
23 that the majority of pharmacists who worked
24 in large chain grocery stores or big box
25 stores felt that they did not have adequate

1 time to complete their job in a safe and
2 effective manner?

3 MS. OCHMAN: Objection to form.

4 MR. SCHEETZ: Objection to
5 form.

6 THE WITNESS: Yeah, that's
7 correct.

8 QUESTIONS BY MR. ELSNER:

9 Q. And how were the results for
10 the large chain standalone pharmacists, how
11 did those -- how did they respond to
12 question 2, "I have adequate time to complete
13 my job in a safe and effective manner"?

14 A. The responses -- the majority
15 of the respondents noted either strongly
16 disagree or disagree.

17 Q. Okay. Now, were the results
18 with respect to these practice sites
19 consistent with results from other practice
20 sites that responded to the survey?

21 A. No.

22 Q. In what way were they
23 different?

24 A. There were certain -- there
25 seemed to be an inverse in many of the

1 questions, so where the large chain
2 respondents would strongly disagree or
3 disagree, the independents would sort of be
4 on the flip side, and the majority of the
5 respondents would either agree or be neutral.
6 So there seemed to be an inverse compared to
7 some of the other practice settings.

8 Q. If we look at the next page on
9 page 8, if you look at the responses from the
10 independent, small chain pharmacies, how did
11 they respond to this question about whether
12 they felt they had adequate time to complete
13 their job in a safe and effective manner?

14 A. They were much more positive
15 about their response -- about their need to
16 complete their job in a safe and effective
17 manner.

18 Q. Has the board tried to
19 determine what the reason for that is?

20 Why those working in
21 independent and small chain pharmacies felt
22 that they had adequate time to complete their
23 jobs, most of them, versus those who worked
24 in large chain grocery stores and
25 independent -- and large chain pharmacies who

1 felt that they did not have adequate time?

2 MS. OCHMAN: Objection to form.

3 MR. HYNES: Objection. Form.

4 THE WITNESS: Yeah, you know, I
5 think that's sort of the ongoing work
6 that we're doing. You know, I think
7 that there's a combination of factors
8 that the survey shows where, for
9 example, metrics are probably used
10 much more -- are deployed in, you
11 know, the larger retail settings as
12 opposed to hospitals or the
13 independent, small chain.

14 So there are -- there are
15 certainly a number of factors that
16 could have showed -- that were
17 contributing to this.

18 QUESTIONS BY MR. ELSNER:

19 Q. So one of the factors you
20 mentioned was metrics.

21 Are there other differences
22 between prescriptions filled at independent,
23 small chain pharmacies versus the larger
24 chain pharmacies and grocery stores that
25 would impact the feelings about adequate time

1 to conduct their job in a safe and effective
2 manner?

3 MR. HYNES: Objection. Form.

4 MS. OCHMAN: Objection to form.

5 THE WITNESS: I mean, if you
6 look at the survey data, you know, you
7 see that the -- at least in the
8 independent, small chain, they felt
9 like they had more staffing, better
10 ratios. I think that there were
11 better lines of communication in terms
12 of -- because obviously there's not a
13 corporate structure in an independent
14 or a small chain, or if there is, it's
15 much smaller.

16 So I think the number of
17 factors that were sort of revealed by
18 the survey showed the issues in the
19 large chain setting.

20 QUESTIONS BY MR. ELSNER:

21 Q. Was there an examination of the
22 volume of prescriptions filled in large chain
23 pharmacies and large chain grocery stores
24 compared to independent pharmacies, and did
25 that have any impact, in the board's view, in

1 response to the survey related to whether
2 people felt they had adequate time to
3 complete their job in a safe and effective
4 manner?

5 MR. HYNES: Objection. Form.

6 THE WITNESS: So I think that
7 we could look at the reported -- the
8 reported numbers that they indicated
9 in the survey and try and make an
10 informed decision about that.

11 But I think what was more
12 telling to us was some of the -- more
13 of these statements in regards to, you
14 know, how they're feeling in their
15 own -- how they're feeling in their
16 own practice setting. Because you can
17 have one pharmacist that is very good
18 at their job and super efficient; you
19 may have one that may take a little
20 bit more time.

21 So in terms of numbers, it's --
22 you know, we didn't look solely at
23 numbers, but that was -- that did play
24 into a fact -- that did play into sort
25 of our overall assessment of the

1 working conditions.

2 QUESTIONS BY MR. ELSNER:

3 Q. There were some new questions
4 in the second survey that we didn't see in
5 the first survey.

6 Is that true?

7 A. Yes.

8 Q. Why was it decided to include
9 some of these new questions on the survey?

10 A. In talking with the committee
11 and as well as internally, we felt like some
12 of the questions in regards -- that the APhA
13 asked in their well-being survey would lend
14 itself to our survey. So we added those
15 questions in at the end or incorporated them
16 into the survey.

17 Q. So if we go to question 11,
18 which is on page 53 of the survey.

19 The question here was, "Please
20 respond to each statement based on your
21 experience over the last six months."

22 What were the responses in
23 large chain standalone pharmacies to this
24 question with respect to medication errors?

25 A. So, the majority or more than a

1 majority of the respondents agreed or
2 strongly agreed to the statement "I have seen
3 an increase in medication errors."

4 Q. And what was the response among
5 large chain pharmacy respondents, how many
6 responded that they felt burnt out because of
7 their work?

8 A. Almost -- basic -- almost all,
9 a majority, well over a majority, a super
10 majority, I would say, felt that way.

11 Q. It looks to me like less than
12 50 people answered that they didn't feel that
13 way in response to the question of whether
14 they felt burned out because of their work.

15 Is that fair?

16 MR. HYNES: Objection. Form.

17 THE WITNESS: Yeah, there's --
18 there's -- there's only I would say a
19 handful of folks.

20 QUESTIONS BY MR. ELSNER:

21 Q. And if we go to the next -- you
22 know, if we go to the next group of questions
23 there with respect to question 12 --
24 actually, let's skip that.

25 Were there -- oh, sorry, hold

1 on one second.

2 Yeah, I'm sorry, if we go to
3 question 12, which is on page 60, is this
4 another new question that was added to the
5 survey in 2021 that was not there in 2020?

6 A. Yes, that's correct.

7 Q. Okay. And this is large chain
8 grocery store respondents when asked to rate
9 the level of satisfaction with their primary
10 place of employment.

11 How did they respond with
12 respect to stress levels?

13 MR. HYNES: Objection. Form.

14 THE WITNESS: I would -- a
15 majority of them were either highly
16 dissatisfied or dissatisfied with
17 their level of stress. A significant
18 number of folks.

19 QUESTIONS BY MR. ELSNER:

20 Q. And if we go to the following
21 page and look at large standalone chains, how
22 did those respondents respond when asked
23 about their level of stress?

24 MR. HYNES: Objection. Form.

25 THE WITNESS: So very

1 similarly, you know. There were only
2 about 43 people who were either
3 neutral or satisfied or highly
4 satisfied, and I think there were
5 either highly dissatisfied or
6 dissatisfied.

7 QUESTIONS BY MR. ELSNER:

8 Q. And did the board seek to ask
9 what impacted the feelings of stress levels
10 at large chain grocery stores and large chain
11 pharmacies?

12 A. I'm sorry, can you repeat that?

13 Q. Yes.

14 Did the board in the survey
15 also dig further into this question related
16 to stress and try to have respondents answer
17 why they were feeling that level of stress?

18 MR. HYNES: Objection. Form.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. ELSNER:

21 Q. If we turn to page --
22 question 13 on page 68.

23 How did those who worked in
24 large grocery stores respond to the amount of
25 stress at their job related to the amount of

1 volume of work that they have to do?

2 MR. HYNES: Objection. Form.

3 THE WITNESS: 55 percent said
4 it was a tremendous amount of stress
5 for them.

6 QUESTIONS BY MR. ELSNER:

7 Q. And how many thought there was
8 a good deal of stress in that?

9 A. Another 36 percent.

10 Q. And how did respondents in
11 large chain grocery stores respond with
12 respect to whether they were short-staffed?

13 A. Well over 68 percent said it
14 caused them a tremendous amount of stress and
15 another 22 percent said it caused them a good
16 deal of stress.

17 Q. And if we look at the responses
18 from the large chain pharmacies on the
19 following page, were those results
20 inconsistent or consistent with the results
21 of the grocery store respondents?

22 MR. HYNES: Objection. Form.

23 THE WITNESS: They appeared to
24 be quite similar in that the majority
25 of the respondents either said it

1 caused them a good deal of stress or a
2 tremendous amount of stress.

3 QUESTIONS BY MR. ELSNER:

4 Q. Okay. And is that true for
5 both the volume of work that they had to do
6 and being short-staffed?

7 A. Yes.

8 Q. Did the board in the 2021
9 survey offer opportunities for respondents to
10 offer comments?

11 A. Yes.

12 Q. Okay. And were there a large
13 number of respondents who provided comments
14 to the 2021 survey?

15 A. Yes.

16 Q. Okay. And did those comments
17 generally -- were they generally consistent
18 with the numerical scores that you calculated
19 in response to questions from the 2021
20 survey?

21 MR. HYNES: Objection. Form.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. ELSNER:

24 Q. I want to just pull up a couple
25 of those. If we look at comment 6, which is

1 on page 95, it reads, "Begging for help. We
2 are understaffed and overwhelmed. We need
3 two pharmacists working to manage safely. My
4 stress is unbearable and it is affecting
5 every aspect of my life. I have been begging
6 for a lunch break for years. I work 14 hours
7 a day without eating, and the job is
8 affecting my physical health, multiple kidney
9 stones, constant headaches. Changes need to
10 occur in our profession so we can perform our
11 job in a safe manner and have an opportunity
12 to actually care for our patients."

13 Is this one of the comments
14 that was provided in response to the 2021
15 survey?

16 A. Yes, it was.

17 Q. Okay. And was the board
18 concerned in response to the '21 -- 2021
19 comments related to staff pressures and being
20 understaffed, was that a concern of the
21 board?

22 MR. HYNES: Objection. Form.

23 THE WITNESS: Yeah, I think
24 any -- I think any time, again, that
25 there's a concern that working

1 conditions are impacting patient
2 safety, the board is going to have a
3 concern.

4 QUESTIONS BY MR. ELSNER:

5 Q. And were these concerns also
6 identified by respondents who worked for some
7 of the defendant pharmacies in this case?

8 A. I -- if they're indicated in
9 the comments, then, yes.

10 Q. Why don't we --

11 A. I believe some of them were
12 mentioned, but I can't tell you specifically.

13 Q. Well, that's fair.

14 There are nearly a thousand
15 comments to this survey in 2021, true?

16 A. There are -- yes, there's a
17 number of -- there's a large amount of
18 comments that we did receive.

19 Q. If we look at comment 156 on
20 page 112, the very bottom there, "I've worked
21 at big box chains, Walmart, Rite Aid and CVS,
22 and workload, stress and treatment is
23 horrible. They are poorly managed, require
24 too much for one pharmacist to handle and
25 only care about metrics. They are

1 inadequately staffed, which greatly affects
2 patient care. The board should be conducting
3 visits with these places and observe how
4 awful it really is."

5 Did I read that correctly?

6 A. Yes.

7 Q. And there's mention here of the
8 board, and there are other criticisms within
9 some of the comments about the board's
10 failure to take action that some pharmacists
11 felt the board should take to protect patient
12 safety, true?

13 MR. HYNES: Objection. Form.

14 THE WITNESS: Yes.

15 QUESTIONS BY MR. ELSNER:

16 Q. Okay. And did you review some
17 of those comments?

18 A. Yes.

19 Q. And did you share those
20 comments with others working at the Ohio
21 Board of Pharmacy?

22 A. I didn't share the specific
23 comments related to criticisms of the board,
24 but the survey comments were disseminated to
25 board staff and available for them to review.

1 Q. Did anyone on the board
2 acknowledge that there were criticisms within
3 the survey of the board's failure to take
4 action to protect patient safety?

5 MR. HYNES: Objection. Form.

6 THE WITNESS: I don't recall
7 having a conversation where that came
8 up.

9 QUESTIONS BY MR. ELSNER:

10 Q. If we could look at comment 28.
11 It's on page 98. It's the third from the
12 bottom.

13 It reads, "Not sure why the
14 state board is asking us to complete this
15 survey. They've shown zero care about the
16 amount of workload being dumped on us by
17 upper management. COVID has been the last
18 straw. Not only do we have to deals with the
19 normal thousand" -- sorry, "thousand
20 prescription volume, but now we are made to
21 do 40 to 50 COVID vaccinations a day, 20 to
22 30 COVID tests a day. Now it is flu season,
23 so add an additional 30 flu shots a day, all
24 while our tech hours are slashed on a monthly
25 basis. Absolutely unacceptable. State board

1 is fully aware of what is going on in the big
2 chains, Walgreens, CVS, Rite Aid, for years
3 but have done absolutely nothing to remedy
4 these problems. The board continues to take
5 the side of big companies. I am looking for
6 another job after 21 years as a pharmacist.
7 Shameful."

8 Were you aware -- is this one
9 of the comments that were made in response to
10 the 2021 survey?

11 A. Yes.

12 Q. The comment there at the
13 beginning, "Not sure why they're asking us to
14 complete this survey," had there been any
15 action taken by the Ohio Board of Pharmacy
16 after receiving the results of the 2020
17 survey and before seeking responses from
18 pharmacists in 2021 with respect to workplace
19 or workload activities in pharmacies?

20 A. So they -- the response was us
21 forming this study committee to develop
22 policies and rules that we could enforce to
23 address some of the concerns that were raised
24 in the survey data.

25 Q. And I appreciate that the board

1 created a committee, but had that committee
2 made any recommendations or policy changes
3 with respect to regulations of the practice
4 of pharmacy in Ohio between 2020 and 2021?

5 A. No. So the committee was
6 appointed in July of 2021, and our first
7 meeting was in October of 2021.

8 Q. Okay. And the pharmacist
9 workload committee, did they create a list of
10 policy issues and questions that they wanted
11 to examine?

12 A. Yes.

13 MR. HYNES: Objection. Form.

14 THE WITNESS: Yes, we did a
15 brainstorming session for potential
16 policy solutions based off of the
17 results of the survey data.

18 (McNamee Exhibit 15 marked for
19 identification.)

20 QUESTIONS BY MR. ELSNER:

21 Q. Okay. I want to pull out
22 MR 4217, and we'll mark this as the next
23 exhibit, which should be Exhibit 15.

24 Are these the draft policy
25 recommendations that were created by the

1 pharmacist workload advisory committee?

2 A. Yes.

3 Q. And were you involved in

4 creating this document, Mr. McNamee?

5 A. Yes.

6 Q. Okay. And is it accurate and

7 complete to the best of your knowledge?

8 A. Yes.

9 Q. Okay. Can you explain to us

10 what this document is?

11 A. So what the committee did was
12 looking at the survey data and then conducted
13 a brainstorming exercise that included --
14 also included some policies from other --
15 that other states had been looking at or had
16 enacted.

17 So what we did is we put
18 together sort of a menu of options for the
19 board to consider, and then we distilled the
20 committee's comments down based on the
21 discussions we had over several meetings in
22 2021 and 2022, and then we also made sure to
23 put this out to the pharmacists to assess
24 their feedback on how this would improve
25 their working conditions, as well as included

1 feedback from some of our major stakeholders
2 that we normally work with, including the
3 National Association of Chain Drug Stores,
4 Ohio Association of Retail Merchants and Ohio
5 Pharmacists Association.

6 Q. And the National Association of
7 Chain Drug Stores, those members include
8 groups, at least, of large chain drugstores
9 like Walgreens.

10 Is that fair?

11 A. Yes.

12 Q. Okay. And the Ohio Retail
13 Merchants, who would be included in that
14 group of stakeholders?

15 A. They basically -- they're the
16 state arm of NACDS in the state of Ohio. So
17 they represent the same individuals. They're
18 basically one and the same.

19 Q. Okay. And so I see here that
20 this document has ranks next to it.

21 What's the significance of
22 that?

23 A. So a part of the committee
24 exercise, because we had such different -- or
25 various practice settings represented, it was

1 probably going to be difficult to sort of
2 come to some formalized consensus.

3 So what we did is we asked the
4 committee to also rank their -- the options
5 based on how they felt it would impact
6 pharmacists' working conditions.

7 Q. Okay. And does rank 1 mean
8 that it has a highest rank or the lowest?

9 A. 1 would be the highest rank
10 that the committee gave a recommendation.

11 Q. Okay. I want to look at some
12 of the responses here. So if I just
13 understand the chart, the first column is
14 rank, and then the title, the type of change,
15 a description of what the change would be.

16 A. Uh-huh.

17 Q. And then some committee
18 comments.

19 Is that true?

20 A. Yes.

21 Q. Okay. And then the pharmacists
22 survey, these are what pharmacists feel about
23 the provision.

24 Is that right?

25 A. Yeah, we deployed this survey

1 in June to provide feedback on the draft
2 policy options.

3 Q. Okay.

4 A. And these are the results.

5 Q. So this is a third survey that
6 was submitted to all pharmacists in Ohio.

7 Is that right?

8 A. Yes.

9 Q. Okay. And did you follow the
10 same policies and procedures and protocol
11 with respect to the third survey as the first
12 two we've examined today?

13 A. Yes.

14 MR. HARRIS: Object to form.

15 QUESTIONS BY MR. ELSNER:

16 Q. Were the responses anonymous?

17 A. Yes.

18 Q. And were they secure?

19 A. Yes.

20 Q. Was there any indication of
21 fraud or misconduct with responses to the
22 third survey?

23 A. No.

24 Q. Okay. Can you explain to me
25 what the NACDS retail merchants column

1 reflects?

2 A. So when we did the pharmacist
3 survey to assist the draft policy options
4 that the committee developed, we also then
5 sent out e-mails to the contacts at NACDS and
6 retail merchants and asked them to provide
7 feedback from their membership. Similarly we
8 did with OPA as well as the American Society
9 of -- or the American Society of
10 Health-System Pharmacists, the Ohio chapter,
11 as well.

12 Q. Okay. Thank you.

13 I want to look at the responses
14 to some of the policy suggestions.

15 The second ranked policy
16 suggestion on page 4 is mandatory breaks and
17 rest periods.

18 Was that one of the policy
19 changes that was proposed?

20 A. Yeah, that was one of the
21 policies that was discussed in the committee.

22 Q. Okay. And the pharmacists that
23 responded to the survey, were they supportive
24 of mandatory breaks and rest periods or not?

25 A. Yes.

1 Q. Okay. And isn't it -- is it --
2 how did the NACDS and Ohio Retail Merchants,
3 the Ohio version of the NACDS, respond to
4 mandatory breaks and rest periods?

5 A. They stated their opposition to
6 it.

7 Q. Let me look at Item 10, which
8 is on page 12, which is managing touch points
9 and ancillary staffing.

10 Can you explain to us what this
11 policy is?

12 A. Yes, so a lot of our
13 discussion -- or some of the discussion on
14 the committee centered around the fact that
15 pharmacies are very open and so you have
16 multiple touch points. And so if you don't
17 have staff at every touch point, you're
18 jumping from, you know, touch point to touch
19 point. So you've got drive-through, you've
20 got one cashier, you've got, you know,
21 another cashier on the other side of the
22 counter -- or on the opposite side.

23 And so the thought process was
24 is to -- the discussion centered around
25 giving some more autonomy to be able to shut

1 down certain touch points if staffing became
2 an issue where they couldn't be managed
3 properly to avoid distractions in the
4 pharmacy.

5 Q. And who was it that you were
6 proposing to have more autonomy with respect
7 to those touch points?

8 A. The pharmacists that are
9 working at the pharmacy.

10 Q. Okay. And were pharmacy staff
11 respondents in favor or not in favor of this
12 proposal?

13 A. They were in favor.

14 Q. Okay. And did the NACDS and
15 its Ohio branch, were they in favor, did they
16 support it or did they not support it?

17 MR. HYNES: Objection. Form.

18 THE WITNESS: No, they opposed
19 it.

20 QUESTIONS BY MR. ELSNER:

21 Q. Let's look next at Item 11,
22 which is on the bottom of page 13, working
23 conditions and security.

24 And can you explain to me what
25 this policy provision is?

1 A. Yes, so this one centered
2 around --

3 Q. Go to the top of the next page,
4 too, that would be helpful, I think.

5 A. Yes, this provision was based
6 off of a California provision called No
7 Pharmacist Left Behind, which requires any
8 open door pharmacy to be staffed by at least
9 one pharmacy and one technician, so kind of
10 creating a minimum staffing level, and so
11 that was what we had discussed in the
12 committee.

13 Q. And were pharmacists in Ohio
14 that responded to the survey in favor of this
15 provision or not in favor of the provision?

16 A. They were in favor.

17 Q. And was the NACDS and its Ohio
18 branch in favor of the provision or were they
19 opposed?

20 MR. HYNES: Objection. Form.

21 THE WITNESS: They were
22 opposed.

23 QUESTIONS BY MR. ELSNER:

24 Q. So I believe you testified that
25 there was a provision like this in California

1 that was in effect and it's reflected in the
2 document.

3 Is that true?

4 A. Yes, that's correct.

5 Q. Okay. So pharmacies -- large
6 chain pharmacies that were operating in
7 California were already operating under this
8 provision in California.

9 Is that fair?

10 MR. HYNES: Objection. Form.

11 THE WITNESS: Yeah. That's my
12 understanding, yes.

13 QUESTIONS BY MR. ELSNER:

14 Q. Okay. So even though it had
15 been in place in California and operational
16 there, and some of the pharmacies who have a
17 presence in California would be in compliance
18 with that, presumably, it was still being
19 opposed by the NACDS.

20 Is that true?

21 MR. HYNES: Objection. Form.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. ELSNER:

24 Q. Let's look at Item 13, the
25 report of understaffing.

1 Can you describe for us what
2 this policy recommendation was?

3 A. Yes. So this recommendation
4 basically had to do with -- I'm sorry, it's
5 moving around on the screen here.

6 This essentially had to do with
7 the ability to document and report staffing
8 situations. So Oklahoma has the requirement
9 where there is a requirement to document
10 issues related to staffing and have that
11 available for board inspection.

12 Q. Were you familiar with the
13 Oklahoma rule?

14 Have you read that,
15 Mr. McNamee?

16 A. Yeah, and I believe it's
17 included in the -- in the document as well.

18 Q. Okay. Were you aware of
19 whether that rule came as a result of any
20 conduct of a particular pharmacy that's a
21 defendant in this case?

22 MR. HYNES: Objection. Form.

23 THE WITNESS: No. I'm not
24 aware, no.

25

1 QUESTIONS BY MR. ELSNER:

2 Q. Okay. Did pharmacists that
3 responded to the third survey, were they in
4 favor of this policy provision or were they
5 opposed to it?

6 A. A majority were in favor of it.

7 Q. And how did the NACDS and its
8 Ohio chapter respond? Were they in favor or
9 were they opposed to the provision?

10 A. They were opposed.

11 Q. Let's go to Item 14, limits on
12 working -- on hours worked.

13 Can you explain this policy
14 provision to us?

15 A. Essentially this would put a
16 cap on the amount of time -- the shift a
17 pharmacist could work in pharmacy in a
18 24-hour period.

19 Q. And did pharmacists in Ohio
20 that responded to the third survey support
21 this provision or were they opposed to it?

22 A. They were in support of it.

23 Q. And did the NACDS and its Ohio
24 branch oppose it or were they in support of
25 it?

1 MR. HYNES: Objection. Form.

2 THE WITNESS: They opposed it.

3 QUESTIONS BY MR. ELSNER:

4 Q. Let's turn to 15, which is on
5 the next page at the bottom, mandatory dark
6 hours.

7 What is that policy proposal?

8 A. So dark hours are essentially
9 or would be if you had an open door pharmacy,
10 they would be -- while they're open, the
11 pharmacy itself could be open, but -- the
12 actual building itself could be open, but the
13 pharmacy department would be closed, but
14 there would still be staff there processing
15 prescriptions.

16 So it's an effort to basically
17 remove any outside distractions and allow
18 pharmacists to catch up or make sure that
19 they've gotten all of their prescriptions
20 filled so they can, you know, better serve
21 their patients.

22 Q. Did pharmacists think that this
23 would be helpful to the pharmacy practice or
24 were they opposed to it?

25 A. They felt --

1 MS. OCHMAN: Objection.

2 QUESTIONS BY MR. ELSNER:

3 Q. Could you repeat your answer,
4 sir?

5 A. They said it would be helpful.

6 Q. Okay. And did the NACDS and
7 its Ohio chapter support this proposal or did
8 they oppose it?

9 MR. HYNES: Objection. Form.

10 THE WITNESS: No, they opposed
11 it.

12 QUESTIONS BY MR. ELSNER:

13 Q. If we turn to 16, metrics, we
14 had a discussion about metrics earlier.

15 What was this policy proposal?

16 A. So this would be based off of a
17 California law that essentially eliminated
18 the use of performance metrics in the
19 practice of pharmacy in the outpatient
20 setting.

21 Q. And how did pharmacists respond
22 to this policy proposal?

23 Were they in favor of the
24 proposal or were they against it?

25 A. They were in favor of it.

1 Q. And was it close or was it a
2 pretty large margin against it -- I mean, in
3 favor of it?

4 A. This was the highest rated
5 policy option from the pharmacists survey.

6 Q. And did the NACDS and its Ohio
7 chapter support it or did they oppose it?

8 MR. HYNES: Objection. Form.

9 THE WITNESS: They opposed it.

10 QUESTIONS BY MR. ELSNER:

11 Q. Now, in October of this year,
12 the Ohio Board of Pharmacy proposed a rule to
13 prohibit the use of quotas in the operation
14 of a pharmacy.

15 Is that true?

16 A. Yes.

17 Q. Sorry?

18 A. Yes.

19 (McNamee Exhibit 16 marked for
20 identification.)

21 QUESTIONS BY MR. ELSNER:

22 Q. Okay. Can we pull MR 4255 and
23 mark that as the next exhibit?

24 Oh, sorry, this is not the
25 right document. If we could go to 4255,

1 Exhibit 16.

2 Do you recognize this document,
3 Mr. McNamee?

4 A. Yes.

5 Q. And what is it?

6 A. This is our notice for
7 stakeholder feedback on our rule to prohibit
8 the use of quotas.

9 Q. You kind of got garbled at the
10 end.

11 Can you repeat your answer?

12 A. Yes, this is our notice to our
13 stakeholders letting them know that they can
14 provide feedback on our proposed quota rule.

15 Q. Okay. And if we go to the next
16 page, is this the proposed quota rule that
17 the board was considering?

18 A. Yes.

19 Q. And was this proposed rule
20 agreed upon by all members of the board's
21 pharmacists workload advisory committee?

22 A. No. So this -- the actual rule
23 itself was drafted -- so the committee ended
24 its work in June of 2020 after we put
25 together that menu of options, and then we

1 put forth this rule based on the overwhelming
2 response from the pharmacists survey about
3 the policy options.

4 Q. Okay. And was this proposed
5 rule approved by the Ohio Board of Pharmacy?

6 A. This rule was authorized to
7 move forward with the initial stakeholder
8 feedback process, which is the first step in
9 our rulemaking process.

10 Q. Okay. So it has yet to be
11 voted on by the Board of Pharmacy. At this
12 stage, they approved it to be sent out for
13 comment.

14 Is that true?

15 A. Yes.

16 Q. Okay. And can you describe for
17 us what the rule provides -- the proposed
18 rule provides?

19 A. Yeah, so essentially this rule
20 was drafted to -- based off of the California
21 law, and essentially what it does is it
22 prohibits the uses of quotas, and quotas are
23 defined as a fixed number or formula related
24 to the duties of the pharmacy personnel
25 against which the pharmacy or its agent

1 measures or evaluates the number of times
2 either an individual performs tasks or
3 provides services while on duty.

4 And it includes sort of fixed
5 requirements related to prescriptions filled,
6 services rendered, which could be
7 vaccinations, programs offered, and then any
8 revenue obtained. And so essentially it
9 prohibits the use of those quotas.

10 There are some exceptions,
11 obviously, you're looking at competence or
12 performance or any metric that is required by
13 state or federal law is still permitted.

14 Q. Has the board issued any other
15 proposed rules in response to the pharmacists
16 workload surveys or the work of the
17 pharmacists workload advisory committee?

18 A. Yes, we did issue a proposed
19 rule to allow pharmacy technicians to
20 administer vaccinations.

21 Q. Okay. Has it issued any other
22 proposed rules other than this proposed rule
23 before us in this exhibit and the rule to
24 permit technicians to administer vaccines?

25 A. It hasn't, but we are -- in

1 subsequent meetings it is expected that we
2 will be issuing additional proposed rules.

3 Q. Okay. Were there any of the
4 proposed policies that we walked through in
5 the prior exhibit that the board has rejected
6 as moving forward with any kind of proposed
7 rule at this stage?

8 A. No, not as of yet. We
9 attempted to -- the technician vaccine
10 administration rule was the one that was most
11 highly ranked from the committee, which is
12 why we started with that one, and then the
13 metrics issue was most highly ranked by the
14 pharmacists in the survey, so that's why we
15 moved to that one. And we're going to sort
16 of systematically move through and decide
17 whether to move on any of the other policy
18 options at future meetings.

19 (McNamee Exhibit 17 marked for
20 identification.)

21 QUESTIONS BY MR. ELSNER:

22 Q. Okay. I want to turn now to
23 MR 4218, and we'll mark this as the next
24 exhibit, which is Exhibit 17. It looks like
25 this version of the exhibit doesn't have the

1 cover page.

2 But, Mr. McNamee, why don't I
3 just ask you, do you recognize what this
4 document is?

5 A. Yeah, this is the notes -- this
6 is the draft notes from Jenni Wai's
7 presentation to a District 4 National
8 Association of Board of Pharmacy meeting
9 regarding our workload survey and our
10 advisory committee.

11 Q. Okay. And so the board felt
12 that the results of the survey were accurate
13 enough to share with the National Association
14 of the Board of Pharmacy.

15 Is that true?

16 MR. HYNES: Objection. Form.

17 THE WITNESS: Yes, we were
18 getting questions about our surveys
19 from other states that were looking to
20 implement some of our surveys.

21 QUESTIONS BY MR. ELSNER:

22 Q. And attached to this was the
23 actual PowerPoint survey.

24 Did you review the comments and
25 notes and the PowerPoint survey and provide

1 edits and suggestions?

2 A. Yes.

3 Q. Okay. And is this an accurate
4 and complete -- and we'll get you the full
5 document to look at -- but is this an
6 accurate and complete version of the notes
7 and the PowerPoint presentation that you
8 reviewed?

9 A. Yes.

10 Q. And was this presentation given
11 to the National Association of the Board of
12 Pharmacy?

13 A. Yes, at their District 4
14 meeting.

15 Q. Okay. I want to ask you about
16 one particular comment, and let me just go
17 through this point since we have it now.

18 This is the e-mail that you
19 sent attaching your comments and edits to the
20 talking points and the PowerPoint deck.

21 Is that right?

22 A. Yes.

23 Q. Okay. And is it accurate and
24 complete?

25 A. Yes.

1 Q. Okay. I want to go now to the
2 second page here.

3 Talking about the comments with
4 respect to slide 3, and it says that "the
5 State of Ohio Board of Pharmacy had, for some
6 time, tried to stay out of employer and
7 employee relationship" -- and I think there's
8 a typo there, which I'm not sure what it
9 means -- "it's organization position to
10 address issues of employment conditions and
11 personnel issues. However, in the last
12 three" -- oh, I'm sorry, let me start that
13 whole thing over.

14 Let me ask you about that
15 particular comment with respect to slide 3 in
16 the fourth paragraph.

17 It reads, "The State of Ohio
18 Board of Pharmacy had, for some time, tried
19 to stay out of employer and employee
20 relationship."

21 What does that mean?

22 MR. HYNES: Objection. Form.

23 THE WITNESS: Yeah, I think, in
24 general, you know, there are -- there
25 are instances where it's -- it really

1 is a matter of, you know, between the
2 employee and the employer where it
3 doesn't bleed over into -- {audio
4 interruption} -- but so we're, I
5 think -- I think what Jenni was trying
6 to express was it becomes our -- it
7 becomes our issue when it does impact
8 patient safety and what she
9 highlighted in that piece in there.

10 QUESTIONS BY MR. ELSNER:

11 Q. Okay. And so is it generally
12 the view that the responsibility for
13 compliance with these regulations, a safe
14 work environment, proper staffing, is the
15 responsibility of the registrant, the
16 pharmacy?

17 MR. HYNES: Objection. Form.

18 MS. OCHMAN: Objection. Form.

19 THE WITNESS: Yeah, under
20 4729.55, yes.

21 QUESTIONS BY MR. ELSNER:

22 Q. So under the Ohio regulations,
23 and they're cited just below that in slide 4,
24 under those regulations, it is the pharmacy
25 that's responsible for complying with these

1 regulations.

2 Is that fair?

3 MR. HYNES: Objection. Form.

4 THE WITNESS: Yeah, that's a
5 condition of their licensure.

6 QUESTIONS BY MR. ELSNER:

7 Q. Okay. And the Ohio Board of
8 Pharmacy doesn't dictate to CVS or Walgreens
9 or Meijer or Kroger how they're to comply
10 with these regulations.

11 Is that true?

12 MR. HYNES: Objection. Form.

13 THE WITNESS: Yes, generally
14 they've -- it's not been the case
15 where we provide, you know, specific
16 specificity in terms of how to run
17 your business, so, yeah, that's --
18 that generally has been our stance.

19 QUESTIONS BY MR. ELSNER:

20 Q. Okay. And so up to this point
21 in time, going back to your comments on
22 slide 3, the board had stayed out of the
23 employee/employer relationship.

24 Is that true?

25 MR. HYNES: Objection. Form.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. ELSNER:

3 Q. And if we look at the comments
4 to slide 3 again, if we could.

5 A. And can I clarify that? We
6 stay out of the employee/employer
7 relationship until it becomes an issue of
8 public safety. So obviously, if we suspend
9 somebody, suspend their license, we are
10 getting involved in the employee/employer
11 relationship.

12 So it's not -- I just wanted to
13 make it clear, that it's -- there are --
14 there is some -- we are involved in the
15 employee/employer relationship just as a
16 matter of regulators when it comes to people
17 violating the law.

18 Q. Okay. And but in this
19 instance, based on the results of the
20 workload survey, did the board feel that it
21 was obligated to step in in some way to
22 examine this issue based on its potential
23 impact on public safety?

24 MR. HYNES: Objection. Form.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. ELSNER:

2 Q. And is it -- and in response to
3 those regulatory obligations and the board's
4 duties, was it based on that authority --
5 well, let me strike that.

6 What is the authority that
7 was -- that is the basis for the board to
8 propose its rulemaking with respect to
9 quotas?

10 MR. HYNES: Objection. Form.

11 THE WITNESS: That would be
12 under 4729.55.

13 QUESTIONS BY MR. ELSNER:

14 Q. Okay. And if we could go down
15 to look at 40 -- the comments on slide 4.

16 And what is that responsibility
17 under 4729.55?

18 MR. HYNES: Objection. Form.

19 THE WITNESS: So the provision
20 of the statute requires the terminal
21 distributor to have adequate
22 safeguards to allow the pharmacist and
23 pharmacy interns employed by that
24 pharmacy to practice in a safe and
25 effective manner.

1 QUESTIONS BY MR. ELSNER:

2 Q. And is this the basis for other
3 proposed rules that you're considering at the
4 Ohio Board of Pharmacy with respect to the
5 regulation of pharmacy practice in Ohio?

6 MR. HYNES: Objection. Form.

7 THE WITNESS: Yes, we would --
8 we would use -- you would use 4729.55
9 as the supporting statute for any
10 rules that we would promulgate on this
11 issue.

12 (McNamee Exhibit 18 marked for
13 identification.)

14 QUESTIONS BY MR. ELSNER:

15 Q. I want to -- I want to, at this
16 point, Mr. McNamee, to just look at a few
17 documents that we referenced in the notice.

18 If we could pull out 4251 and
19 mark 4251, and we'll mark this as Exhibit 18.

20 Before I get there, though,
21 what is the -- what is the view of the Ohio
22 Board of Pharmacy staff today and the goals
23 of the staff on a going-forward basis with
24 respect to pharmacists workload issues?

25 MR. HYNES: Objection. Form.

1 MS. OCHMAN: Objection to form.

2 THE WITNESS: Yeah, so I think
3 the goal is to try and right size this
4 issue. So we want to see our
5 policies -- any policies that we
6 implement have a noticeable impact on
7 survey responses, first and foremost,
8 and, you know, looking at other
9 metrics regarding patient safety.

10 So, you know, in the scenario
11 we want to -- we want to try and, you
12 know, restore some balance to the
13 working conditions of our licensees.

14 QUESTIONS BY MR. ELSNER:

15 Q. Thank you.

16 MR. ELSNER: Could we go off
17 the record a second?

18 VIDEOGRAPHER: The time right
19 now is 12:46 p.m. We're off the
20 record.

21 (Off the record at 12:46 p.m.)

22 VIDEOGRAPHER: The time right
23 now is 12:59 p.m. We're back on the
24 record.

25

1 QUESTIONS BY MR. ELSNER:

2 Q. Mr. McNamee, I would like you
3 to take a look at MR 4251, which we'll mark
4 as Exhibit 18. This is a PowerPoint deck
5 which bears your name.

6 Do you recognize this document,
7 sir?

8 A. Yes.

9 Q. And what is it?

10 A. It's a presentation that myself
11 and my executive director gave regarding
12 policies and programs to prevent drug abuse
13 and overdose deaths.

14 Q. Do you remember who you gave
15 the presentation to?

16 A. I don't recall.

17 Q. Okay. Was this prepared by you
18 in the regular course of your duties with the
19 Ohio Board of Pharmacy?

20 A. Yes.

21 Q. And is it accurate and
22 complete?

23 A. Yes.

24 Q. I want to have you turn to --
25 let me ask, what is OARRS?

1 A. OARRS stands for the Ohio
2 Automated RX Reporting System. It's the
3 state's Prescription Drug Monitoring Program.

4 Q. And what is a Prescription Drug
5 Monitoring Program?

6 A. So a Prescription Drug
7 Monitoring Program collects -- at least our
8 prescription drug monitoring in Ohio collects
9 all dispensation of Schedule II through V
10 controlled substances, as well as gabapentin
11 and naltrexone, that are dispensed by
12 pharmacies, as well as personally furnished
13 by prescribers, and those are reported to a
14 centralized electronic database. And the
15 purpose of the database is to improve -- to
16 identify any abhorrent behavior, like doctor
17 shopping, or to just better coordinate care
18 in terms of providing controlled substances
19 to patients.

20 Q. Among its functions, does it
21 include a function to -- or a purpose to help
22 identify abuse and diversion of controlled
23 substance -- controlled substances?

24 MR. HYNES: Objection. Form.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. ELSNER:

2 Q. Do you know how long the OARRS
3 program has been in existence in Ohio?

4 A. Yeah, it started operation in
5 October of 2006.

6 Q. Okay. And I want to have you
7 turn to page 7 of the document.

8 Can you describe for me what's
9 depicted here in page 7?

10 A. Yes. So this is an analysis
11 that was conducted by our PDMP administrator
12 taking a look at unintentional overdose
13 deaths and matching them to the OARRS data,
14 and they found that 70 percent of all of the
15 unintentional drug overdoses had at least one
16 prescription in OARRS for a controlled
17 substance that was dispensed after July 1 of
18 2013.

19 And then 30 percent -- 37
20 percent of those unintentional overdose
21 deaths that involved a prescription opioid
22 had at least one prescription for an opioid
23 within 30 days prior to their death.

24 Q. And why was -- why were you
25 reporting on these statistics?

1 Why was it important
2 information that you wanted to convey?

3 A. I think it's important to
4 convey because I think a lot of times people
5 will -- people assume that there's no
6 opportunity for intervention for people who
7 are -- who may -- or who are going to
8 overdose. So, for example, like they're
9 outside of the medical system. But this kind
10 of shows that they had interaction with the
11 medical system and that there may be
12 opportunities for intervention to prevent
13 unintentional overdoses.

14 Q. Okay. I want to have you turn
15 to page 15 of this PowerPoint deck, and it's
16 entitled "Kroger Case Study."

17 Can you describe for me what
18 this slide is depicting?

19 A. Yeah, so we -- early in our --
20 in early, I want to say 2014, we received a
21 federal grant to essentially integrate our
22 prescription drug monitoring program into the
23 electronic dispensing software of both a
24 hospital system -- well, an EMR for a
25 hospital system and for a dispensing system,

1 which was Kroger.

2 So we highlighted an
3 integration essentially allowing the
4 pharmacist to check the PDMP without having
5 to leave their dispensing system, so it was
6 automatic. And that resulted in -- you know,
7 this statistic provides the results of that
8 integration project, which showed that more
9 prescriptions were being checked than were
10 being dispensed, and one could infer that
11 that was because the pharmacists were --
12 because of the OARRS checks, were exercising
13 their corresponding responsibility and
14 denying patient scripts that may be
15 illegitimate or dangerous to their health.

16 Q. And so in 2014, pharmacists at
17 Kroger had the capacity to check OARRS.

18 Is that true?

19 A. Yes.

20 Q. Okay. But in order to do so,
21 they needed to move to a different computer
22 system to check.

23 Is that your understanding?

24 MR. HYNES: Objection. Form.

25 THE WITNESS: Yeah, they had to

1 access it through a web portal.

2 QUESTIONS BY MR. ELSNER:

3 Q. So they could integrate it
4 through their system, but they had to access
5 it through a separate web portal.

6 Is that right?

7 MR. HYNES: Objection. Form.

8 THE WITNESS: Yes, they could
9 access it through the web portal.

10 This pilot study we did
11 integrated it into the actual
12 dispensing software, so there was no
13 need to hop into a different system to
14 check.

15 QUESTIONS BY MR. ELSNER:

16 Q. Now, was it possible for all of
17 the pharmacies to integrate the system
18 directly into their software programs?

19 A. Yes.

20 MR. HYNES: Objection. Form.

21 QUESTIONS BY MR. ELSNER:

22 Q. So if CVS or Walgreens or
23 Walmart or Meijer decided to do this on their
24 own, were they able to do that?

25 A. Conceivably, yes.

1 MR. HYNES: Objection. Form.

2 QUESTIONS BY MR. ELSNER:

3 Q. And when the accessing the PDMP
4 was not integrated in 2014, less than
5 10 percent of the prescriptions for
6 controlled substances were checked in OARRS.

7 Is that what this slide
8 depicts?

9 MR. HYNES: Objection. Form.

10 THE WITNESS: Yeah, about
11 9.95 percent of all controlled
12 substances were checked in OARRS by --
13 {audio interruption}.

14 QUESTIONS BY MR. ELSNER:

15 Q. Sorry, could you repeat that
16 because you got a little garbled at the end?

17 A. About 9.95 percent of
18 prescriptions dispensed were checked in
19 OARRS -- or controlled substances dispensed
20 were checked in OARRS.

21 Q. Okay. And that was by Kroger
22 in 2014, correct?

23 A. Uh-huh.

24 Q. Okay. But if the system had
25 been integrated across all the chain

1 pharmacies, then that number conceivably
2 would have increased to having every
3 prescription checked through the PDMP.

4 Is that true?

5 MR. HYNES: Objection. Form.

6 THE WITNESS: Yeah, that would
7 have been an option for them.

8 And just to clarify, we do
9 offer statewide -- {audio
10 interruption}.

11 QUESTIONS BY MR. ELSNER:

12 Q. You do offer what?

13 A. We do offer state -- in 2016,
14 the state decided to pay for statewide
15 integration, which began onboarding a number
16 of the pharmacies and prescribers around the
17 state.

18 Q. And that's a -- that's a
19 service that the board offered starting in
20 2016.

21 A. Yeah, that's a service, yeah,
22 that we pay for, uh-huh.

23 Q. And are all of the defendant
24 pharmacies in this case fully integrated as
25 of 2016?

1 A. I'm not aware of the status of
2 the defendant pharmacies. I know that
3 there's about 83 percent of the state
4 pharmacies are integrated, but I'm not aware
5 of the -- each individual chain's status in
6 terms of integration.

7 Q. Are you aware of any of the
8 chain pharmacy defendants in this case that
9 have refused or not accepted the integration?

10 A. I'm not aware. The only thing
11 I've heard is that because of, you know,
12 the system builds that they were allowed, you
13 know, they needed -- you know, they needed
14 some implementation time, you know. So it
15 wasn't immediate when it was offered. There
16 needed to be some build time. But I wasn't
17 aware of anybody's refusal.

18 Q. And prior to 2016, could the
19 chain pharmacies have otherwise purchased
20 this integration prior to receiving this
21 grant?

22 MR. HYNES: Objection. Form.

23 THE WITNESS: Yeah, there's
24 a -- there was a product on the market
25 that we used that could have

1 availed -- they could have availed
2 themselves of, yes.

3 QUESTIONS BY MR. ELSNER:

4 Q. And when was that product first
5 available, to your knowledge?

6 A. I'm not sure when PMP Gateway
7 came out. That would -- that's beyond my
8 knowledge, but I do know it was obviously
9 around in 2014.

10 Q. Okay. And that's called PMP
11 Gateway.

12 Is that right?

13 A. Yes.

14 Q. And do you know the company
15 that provides that software?

16 A. Yeah, so they were previously
17 known as Appriss, but now they're Bamboo
18 Health.

19 Q. Okay. Thank you.

20 (McNamee Exhibit 19 marked for
21 identification.)

22 QUESTIONS BY MR. ELSNER:

23 Q. If we could turn to 4252. This
24 is Exhibit 19.

25 Mr. McNamee, is this an e-mail

1 that you sent related to a work plan and
2 narrative on April 14, 2015?

3 A. Yes.

4 Q. Okay. And did you send this
5 e-mail in the regular course of your business
6 at the Ohio Board of Pharmacy?

7 A. Yes.

8 Q. Okay. And was the e-mail saved
9 and stored in the course of -- the regular
10 course of business at the Ohio Board of
11 Pharmacy?

12 A. Yes.

13 Q. Okay. I would like you to turn
14 to page 3 -- one second -- and there's a
15 section at the bottom which talks about
16 expanding and improving proactive reporting.

17 Do you see that?

18 A. Yes.

19 Q. Can you describe for me what --
20 and it says, "Develop a proactive reporting
21 system, i.e., red flags, for OARRS users."

22 Can you describe for me what
23 that is?

24 A. So what we wanted to do is when
25 you review an OARRS report, it is raw data,

1 and so what we wanted to do was to -- based
2 on previous overdose statistics and what we
3 know of the risk factors, we wanted to be
4 able to create some red flags that would
5 immediately alert, you know, that you
6 wouldn't have to sort of analyze the raw
7 data. You could immediately see that there
8 might a problem, such as overlapping
9 therapies or high morphine equivalent dose,
10 those kind of things. So we wanted to make
11 the system even more user friendly so that
12 people could identify any issues and address
13 them.

14 Q. And when did this technology
15 first become available?

16 A. So we ended up purchasing a --
17 an upgrade to our OARRS system called
18 NarxCare, which does provide overdose risk
19 scores. I want to say that occurred in 2016.

20 So that provide -- that uses an
21 algorithm to assign risk factors, as well as
22 provides red flags on common risk factors,
23 like overlapping therapies and things of that
24 nature.

25 Q. And was this technology

1 available before the board acquired it in
2 2016?

3 A. No.

4 I -- I'm not -- I'm not sure.

5 I think NarxCare came out -- NarxCare was a
6 relatively new product, so I'm not -- I'm not
7 sure whether or not it was available prior to
8 us, you know, purchasing it for the state.

9 Q. Do you believe that it's
10 important to use dispensing data to search
11 for signs of diversion and red flags?

12 MR. HYNES: Objection. Form
13 and scope.

14 THE WITNESS: Yes, and in fact,
15 we do have data analysts and
16 special -- and agents that do look for
17 the -- that do look at the dispensing
18 data for those red flags as well.

19 QUESTIONS BY MR. ELSNER:

20 Q. And would it be your
21 expectation that pharmacies should be using
22 their data to also be looking for red flags
23 of potential diversion?

24 MR. HYNES: Objection. Form
25 and scope.

1 THE WITNESS: Yes, they have an
2 obligation under their corresponding
3 responsibility under both state and
4 federal law.

5 (McNamee Exhibit 20 marked for
6 identification.)

7 QUESTIONS BY MR. ELSNER:

8 Q. I would like to have you now
9 look at MR 4250. And this will be
10 Exhibit 20.

11 Do you recognize this document?

12 A. An e-mail I sent to the
13 governor's cabinet opiate action team
14 coordinator.

15 Q. And did you do that in the
16 regular course of your business at the Ohio
17 Board of Pharmacy?

18 A. Yes.

19 Q. And was it stored by the Ohio
20 Board of Pharmacy in the regular course of
21 its business?

22 A. Yes.

23 Q. Does it appear to you to be
24 accurate and complete?

25 A. Yes.

1 Q. I want to have you take a look
2 on page 3. And there's a section here at the
3 bottom, Review of 2014 Unintentional Drug
4 Overdose Deaths Data.

5 Do you see that?

6 A. Yes.

7 Q. Okay. And there's some
8 reporting here, which states that,
9 "42 percent of all unintentional drug
10 overdose deaths had a morphine equivalent
11 daily dose of 80-milligram or greater at some
12 point in the past."

13 Do you see that?

14 A. Yes.

15 Q. Okay. And when this document
16 was compiled, did the board do its best to
17 make sure that this information was accurate
18 and complete?

19 A. Yes.

20 Q. Why did you feel it was
21 important to include this particular
22 parameter in reviewing unintentional drug
23 overdose deaths in 2014?

24 A. So 80 MED was a standard that
25 the state set in terms of additional

1 requirements on prescribers for -- when
2 they're providing care using opioid
3 analgesics.

4 So it was -- we used the 80 MED
5 to -- you know, because that was already a
6 point where you had to do additional actions
7 as a provider -- prescriber in the state. So
8 we wanted to highlight, you know, that that
9 is still very much a risk factor of exceeding
10 that 80 MED. So we just wanted to reinforce
11 that 80 MED threshold that we had set in
12 state guidelines, I believe, at the time.

13 Q. And beneath that, you offer
14 some statistics with respect to overdose
15 deaths that involve benzodiazepines.

16 Can you describe for me that
17 statistic and why you thought it was
18 important to include that?

19 MR. HYNES: Objection. Form.

20 THE WITNESS: Yes. So there's
21 always -- there's constantly a focus
22 on opioids, but I think what we wanted
23 to reiterate was the role that
24 benzodiazepines were playing,
25 particularly as central nervous system

1 depressants. They're often used in
2 combination with other drugs to -- you
3 know, to result in overdose. So we
4 wanted to also highlight
5 benzodiazepine use because it was a
6 contributor to unintentional overdose
7 deaths.

8 QUESTIONS BY MR. ELSNER:

9 Q. And how many people had -- or
10 what percentage of those who overdosed had a
11 benzodiazepine prescription within 30 days of
12 their death?

13 A. That would be 44 percent of
14 unintentional deaths involving benzos.

15 Q. You mentioned the combination
16 benzodiazepines with opioids.

17 Is that a risk factor for
18 overdose?

19 A. Yes.

20 Q. And what statistics did you
21 have to share with respect to the number of
22 people who died of an overdose that had an
23 opioid and a benzodiazepine prescription?

24 A. It was about 30 percent of all
25 unintentional drug overdose deaths.

1 MR. ELSNER: Okay. I think
2 I'm -- I think I've concluded my
3 examination, Mr. McNamee. I want to
4 thank you for your time today.

5 MR. HYNES: Go off the record.

6 VIDEOGRAPHER: The time right
7 now is 1:19 p.m. We're off the
8 record.

9 (Off the record at 1:19 p.m.)

10 VIDEOGRAPHER: The time right
11 now is 1:42 p.m. We're back on the
12 record.

13 CROSS-EXAMINATION

14 QUESTIONS BY MR. HYNES:

15 Q. Good afternoon, Mr. McNamee.
16 My name is Paul Hynes. I represent CVS.
17 Thank you for taking some time with us today.

18 I first want to just do some
19 quick questions on your background.

20 You mentioned you went to your
21 undergrad -- you got your undergraduate
22 degree from Georgetown.

23 A. Yes.

24 Q. What was that?

25 A. Yes.

1 Q. We're having trouble hearing
2 you. I don't --

3 A. Give me one second.
4 Can you hear me now?

5 Q. Yes. Thank you.

6 A. Yes. So...

7 Q. Okay. And that was in
8 government?

9 A. Yes.

10 Q. And a master's degree also from
11 Georgetown.

12 A. Yes.

13 Q. In public policy.

14 A. Yes.

15 Q. Do you have any -- hold any
16 other degrees?

17 A. No.

18 Q. So you do not have a degree in
19 pharmacy?

20 A. No.

21 Q. You don't have a degree in law?

22 A. No.

23 Q. Public health?

24 A. No.

25 Q. Math?

1 A. No.

2 Q. Statistics?

3 A. No.

4 Q. Science?

5 A. No.

6 Q. Study design?

7 A. No.

8 Q. Your work experience, I believe
9 you testified to Mr. Elsner that you worked
10 at the Ohio Department of Health before you
11 started work at the Ohio Board of Pharmacy.

12 Is that correct?

13 A. Yes.

14 Q. When did you work at the Ohio
15 Department of Health?

16 A. That was from 2010 until I left
17 the board in 2013.

18 Q. Okay. Did you --

19 A. I'm sorry, 2009. Sorry, 2009
20 to 2013.

21 Q. Did you work anywhere before
22 you worked at the Ohio Department of Health?

23 A. Yeah, I worked for the Ohio
24 Senate.

25 Q. And when was that?

1 A. That was for the year 2008.

2 Q. Any other employment?

3 A. Oh, scratch that. Sorry.

4 Time's getting away from me.

5 2009 is when I was in the
6 Senate, and then I went to health in 2010.

7 Q. Okay. Any other employment
8 besides what we've discussed?

9 A. Prior to that, I was a Peace
10 Corps volunteer, and then prior to that, I
11 worked at the Embassy of the European Union
12 Delegation in Washington, DC.

13 Q. Okay. You understand -- do you
14 understand that you are here as what's called
15 a corporate representative of the Ohio Board
16 of Pharmacy?

17 A. Yes.

18 Q. And that's the capacity in
19 which you are testifying.

20 Do you understand that?

21 A. Yes.

22 Q. Okay. What did you do to
23 prepare to testify as the corporate
24 representative of the Ohio Board of Pharmacy?

25 A. So I had a meeting with Henry

1 Appel, our legal counsel, as well as Joe
2 Koltak, who is our in-house counsel, to
3 discuss deposition prep.

4 I did review some of the
5 documents. And that was it.

6 Q. Was that just one meeting?

7 A. Yes.

8 Q. And which documents did you
9 review?

10 A. I reviewed the documents that
11 were sent over I want to say about two days
12 ago. So not the complete set of documents
13 that we just reviewed, but the ones that were
14 provided.

15 Q. Who were they provided by?

16 A. I believe they were provided by
17 the -- by --

18 Q. Sorry, we couldn't hear you
19 there.

20 A. I'm pulling up the e-mail right
21 now. I just want to -- they were provided by
22 Michael Elsner.

23 Q. And how many documents were
24 provided by Michael Elsner?

25 A. Let's see. One second.

1 We have seven documents.

2 Q. Okay.

3 MR. HYNES: Mike, would you
4 mind forwarding us a copy of that
5 e-mail just so we have it for the
6 record?

7 MR. ELSNER: It was -- well, it
8 was an e-mail to his counsel; it was
9 not to the witness. So I'll -- I
10 don't mind doing it.

11 MR. HYNES: Thank you.

12 QUESTIONS BY MR. HYNES:

13 Q. Mr. McNamee, did you review any
14 other documents besides those seven
15 documents --

16 A. I --

17 Q. -- in preparing for the
18 deposition?

19 A. I did -- I did take a look at
20 some of the survey documents on the website.

21 Q. On the Ohio Board of Pharmacy
22 website?

23 A. Yes, on the pharmacist workload
24 advisory committee website.

25 Q. Okay. And those are documents

1 about the survey conducted in 2020?

2 A. And '21, yes.

3 Q. And '21.

4 Okay. Did you review any other
5 documents besides the seven attached to the
6 e-mail and the doc -- the documents about the
7 survey that are on the committee's website?

8 A. No.

9 Q. In preparing for this
10 deposition, did you interview any current or
11 former board members of the Ohio Board of
12 Pharmacy?

13 A. No.

14 Q. Did you interview any current
15 or former members of the workload advisory
16 committee?

17 A. No.

18 Q. Did you interview any Board of
19 Pharmacy agents who conduct inspections of
20 pharmacies?

21 A. No.

22 Q. Did you interview any Board of
23 Pharmacy staff in preparing for the
24 deposition today?

25 A. No.

1 Q. Did you review any inspection
2 reports of Ohio Board of Pharmacy inspections
3 of any of the defendant pharmacies?

4 A. No.

5 Q. Did you have any communications
6 with anyone besides Mr. Appel -- and I forget
7 the other lawyer's name -- for the Ohio Board
8 of Pharmacy about this deposition?

9 A. The only one person would be
10 Sharon Maerten-Moore, who is our chief legal
11 counsel.

12 Q. Any communications at all with
13 any plaintiffs' lawyers about the opioids
14 litigation?

15 A. No.

16 Q. When you were asked, in
17 response to Mr. Elsner's questions, whether
18 the board had concerns or whether the board
19 felt -- how the board felt about something,
20 was your answer limited to how the Board of
21 Pharmacy staff or I guess -- strike that.

22 Was it limited to what you,
23 Cameron McNamee, felt or had concerns about
24 with respect to those issues?

25 MR. ELSNER: Objection. Form.

1 THE WITNESS: When I said board
2 staff, I meant more than just myself
3 when referring to that.

4 QUESTIONS BY MR. HYNES:

5 Q. And what was your basis for
6 knowing the knowledge or concerns of board
7 staff?

8 A. I regularly meet with our chief
9 pharmacist, who heads up our compliance
10 department, every week, and we have also been
11 actively -- she is also a staff support
12 member on our -- on our pharmacist workload
13 advisory committee. And I also speak to
14 our -- we have field staff meetings, so I get
15 to interact with the staff that way as well.

16 And we did give a
17 presentation -- or we have touched on the
18 workload issue before in our field staff
19 meetings.

20 Q. Okay. Your questions were
21 limited to the board staff, were you
22 excluding the board itself, the members of
23 the Ohio Board of Pharmacy?

24 MR. ELSNER: Objection.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. HYNES:

2 Q. You've mentioned staff -- you
3 referenced staffing complaints in response to
4 some questions.

5 Have you personally reviewed
6 any staffing complaints that the Ohio Board
7 of Pharmacy has received?

8 A. No. But I get -- that
9 information is communicated to me through,
10 Jenni, who is our chief pharmacist.

11 Q. And you're aware that the Board
12 of Pharmacy conducts inspections of
13 pharmacies?

14 A. Yes.

15 Q. Have you ever reviewed any
16 inspection reports from those inspections?

17 A. I have seen an inspection
18 report. I have not reviewed specific
19 inspection reports related to working
20 conditions.

21 Q. Do you know whether, as part of
22 a Board of Pharmacy -- a Board of Pharmacy
23 inspection, agents review staffing of a
24 pharmacy?

25 A. I know that I -- there -- I'm

1 not sure if it's specific to question related
2 to staffing as it relates to general
3 inspections. I am aware that when there is
4 an error in dispensing investigation/
5 inspection, they do look at working
6 conditions and --

7 COURT REPORTER: And what? I'm
8 sorry.

9 THE WITNESS: And staffing
10 levels.

11 QUESTIONS BY MR. HYNES:

12 Q. And have you ever -- did you
13 review any of those reports of those
14 investigations in connection with your
15 preparation for today's deposition?

16 MR. ELSNER: Objection.

17 THE WITNESS: No.

18 QUESTIONS BY MR. HYNES:

19 Q. You were asked about a Chicago
20 Tribune article.

21 Do you remember that?

22 A. Yes.

23 Q. You had no involvement in the
24 study done by The Chicago Tribune.

25 Is that correct?

1 A. Yes, I didn't have any
2 involvement.

3 Q. You just read the article at
4 one point?

5 A. Yes.

6 Q. You were asked about a New York
7 Times article.

8 Do you remember that?

9 A. Yeah.

10 Q. You weren't involved in
11 preparing that article, were you?

12 A. No.

13 Q. You just reviewed it at some
14 point.

15 A. Yes.

16 Q. Okay. You were asked about
17 surveys done by the Missouri Board of
18 Pharmacy, I think the Tennessee Board of
19 Pharmacy and the Maryland Board of Pharmacy.

20 Is that right?

21 A. Yes.

22 Q. Were you involved in preparing
23 those surveys?

24 A. No.

25 Q. You were also asked about a

1 2014 national survey of pharmacists, correct?

2 A. Yes.

3 Q. Were you involved in designing
4 or carrying out that survey?

5 A. No.

6 Q. You were asked about a 2019
7 national survey of pharmacists, correct?

8 A. Yes.

9 Q. Same question, were you
10 involved in designing or conducting that
11 survey?

12 A. No.

13 Q. Back to the Maryland survey --
14 I'm sorry, Missouri survey.

15 You said that, am I right, that
16 some of the questions in the 2020 survey by
17 the Ohio Board of Pharmacy, that some of
18 those questions were taken from the Missouri
19 Board of Pharmacy survey.

20 Is that correct?

21 A. Yes.

22 Q. Do you know who drafted those
23 questions for the Missouri Board of Pharmacy?

24 A. Not specifically, no.

25 Q. Are you able to tell us which

1 of the questions were taken from the Missouri
2 Board of Pharmacy survey?

3 A. I mean, not -- I mean, yeah, I
4 could pull up the Missouri survey and do a
5 question-by-question analysis.

6 Q. But sitting here today, you
7 don't remember?

8 A. Not off the top of my head, I
9 don't know which questions are identical. I
10 know a lot of them are or close to.

11 Q. In your estimation, what
12 percentage of the questions were taken from
13 the Missouri Board of Pharmacy survey?

14 MR. ELSNER: Objection.

15 THE WITNESS: I want to say
16 probably 80 to 90 percent.

17 QUESTIONS BY MR. HYNES:

18 Q. And were they taken word for
19 word?

20 A. Some might have.

21 Q. Okay. And can you tell us what
22 sort of process the Missouri Board of
23 Pharmacy went through to craft those
24 questions?

25 A. No.

1 Q. You testified that the -- or
2 you were asked and I think you answered yes
3 that the board tried to write fair and
4 unbiased questions.

5 Is that -- do you remember
6 that?

7 A. Yeah.

8 Q. What did the board do to try to
9 write fair and unbiased questions?

10 A. So I think, you know, we looked
11 at it from a staff perspective and, you know,
12 looking at what we were trying to accomplish,
13 and we felt that the Missouri survey did a
14 pretty good job of asking, you know, some
15 pretty objective questions.

16 And so we decided just to, you
17 know, not necessarily reinvent the wheel too
18 much and just simply adopt many of their
19 questions as we felt, you know, they were
20 fair and objective.

21 Q. You said you looked at it from
22 a staff perspective.

23 Who looked at those questions?

24 A. Our chief pharmacist, I believe
25 some folks in the compliance department,

1 myself, our executive director. I want to
2 say our president and vice president also
3 were involved.

4 Q. Is there any memo or work
5 product that reflects your and the staff's
6 analysis of those questions?

7 A. I would say that a lot of
8 consultation we did, we did it via phone. So
9 in my weekly meetings with our chief
10 pharmacist, they're remote meetings, so we --
11 we have those discussions there.

12 Q. Did you consult with any survey
13 experts in either considering the Missouri
14 questions or in crafting your own questions?

15 A. No.

16 Q. You mentioned that one of the
17 third parties that you consulted was Donald
18 Sullivan.

19 Is that correct?

20 A. Yes.

21 Q. And who is Donald Sullivan?

22 A. He's a professor at OSU, and
23 also he's an expert witness that is used a
24 lot in controlled substance diversion cases.
25 He's been around for a very long time, you

1 know, in the Ohio pharmacy space, so...

2 Q. Sorry. Go ahead.

3 A. So, again, we wanted to bounce
4 the idea off of him as well.

5 Q. And he's a pharmacist, correct?

6 A. Yes.

7 Q. Okay. His degree is in
8 pharmacy?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Oh, sorry, yes, he is.

12 Q. We need verbal answers.

13 A. Yes.

14 Q. For the questions that were not
15 borrowed from the Missouri Board of Pharmacy,
16 who drafted them?

17 A. I did.

18 Q. Did anyone assist you?

19 A. Again, our chief pharmacist, we
20 kind of -- you know, she was a sounding board
21 for me.

22 Q. And what was her name?

23 What was her name? Is that

24 Jenni Wai?

25 A. Jenni Wai, yes.

1 Q. Did you consult with anyone
2 else about the survey questions that you
3 drafted?

4 A. Well, again, it was circulated,
5 you know, for our director of compliance, our
6 executive director, the governor's office,
7 again, got a -- was able to -- was -- got a
8 peek at it. So we had a few eyes on it.

9 Q. And who gave you comments or
10 edits?

11 MR. ELSNER: Objection.

12 THE WITNESS: There weren't a
13 whole a lot of comments or edits,
14 really. I think Jenni was mostly
15 my -- the person providing some
16 feedback based on what she's been
17 hearing.

18 QUESTIONS BY MR. HYNES:

19 Q. You're aware that the response
20 rate of the first survey was 26 percent?

21 A. Yes.

22 Q. That the response rate of
23 the -- of the second survey was 20 percent?

24 A. Yes.

25 Q. What sort of things did you

1 guys do in the design of the survey to
2 account for nonresponse bias?

3 A. Well, we made -- we made an
4 effort to at least ensure that we were re --
5 having the e-mails triggered to the
6 pharmacist multiple times if they hadn't
7 responded, but other than that, there wasn't
8 much in the way of planning for nonresponse
9 bias.

10 Q. Did you consult any experts
11 about how to account for nonresponse bias?

12 A. No.

13 Q. Did you study the literature
14 about how to account for nonresponse bias?

15 A. No.

16 Q. Do you know whether the
17 Missouri Board of Pharmacy, in crafting its
18 questions, made any attempts to account for
19 nonresponse bias?

20 A. I'm not aware.

21 Q. The second survey that was
22 done, those questions, I think you said some
23 were borrowed from a national APhA survey.

24 Is that correct?

25 A. Yes.

1 Q. And those were the questions
2 towards the end?

3 A. Yes.

4 Q. Okay. And did the remainder of
5 the questions, how were those generated?

6 A. The remainder of the questions
7 were the same questions we asked in 2020.

8 Q. Okay. And the ones that were
9 crafted by APhA, do you know who drafted
10 those questions?

11 A. I'm not aware, no.

12 Q. Do you know whether APhA made
13 any efforts to address bias in the crafting
14 of its questions?

15 A. I'm not aware, no.

16 Q. You mentioned a link that was
17 sent to pharmacists to complete the survey or
18 to ask them to complete the survey, correct?

19 A. Yes.

20 Q. We're going to talk about that
21 real quick.

22 And I believe you testified
23 that the link was designed so that a
24 pharmacist could only complete one survey.

25 A. Yes.

1 Q. And walk us through how that
2 works.

3 A. So the specifics of it, we
4 worked with our IT department and they
5 developed sort of individualized links that
6 go to each licensee so they can only take the
7 survey once.

8 Q. And were there any audits or
9 tests done to make sure that worked as
10 intended?

11 A. No, I -- again, I just -- the
12 way that the process was developed was to
13 ensure that, so that's what we based our
14 decision on.

15 Q. Okay. But nothing was done
16 after the fact to make sure it worked?

17 A. No, there were -- I mean, there
18 were no issues reported to us from the IT
19 folks.

20 Q. No audits were done to ensure
21 that no pharmacist filled it out twice?

22 A. No.

23 Q. And who is the IT person who
24 developed this link or technology?

25 A. Sure, his name is Jonathan

1 Brown.

2 Q. And the individuals who
3 completed this survey -- so am I right that
4 the e-mail was sent to every individual who
5 was licensed with the Ohio Board of Pharmacy?

6 A. Every individual that was
7 licensed in the state. So we omitted the
8 nonresident pharmacists.

9 Q. How did you do that?

10 A. We based it on -- we required
11 them to report their place of employment,
12 their primary place of employment, and if
13 they had -- and I think we also omitted those
14 folks who were -- even if they didn't have
15 their primary place of employment on file, if
16 they were, you know, out of state, like in
17 Florida, those folks were also omitted.

18 Q. Sorry, you said they were
19 omitted?

20 A. Yes, they weren't -- they
21 didn't receive a link if they were -- if
22 their mailing address was out of state.

23 Q. Okay. So you based their
24 location on the information the board had on
25 file?

1 A. Yes.

2 Q. Okay. As part of the survey,
3 you didn't ask them whether they do, in fact,
4 work in Ohio?

5 A. No.

6 Q. And it's possible -- is it
7 possible that the address that the board has
8 on file for a particular pharmacist is out of
9 date?

10 A. I mean, it's always possible.
11 They are required by rule to give those
12 updates to us.

13 Q. Were any audits or checks done
14 to make sure that only pharmacists working in
15 the state of Ohio completed the survey?

16 A. Just -- we just based it off
17 the license data, so there were no audits.

18 Q. Was any effort made to exclude
19 individuals who are licensed with the board
20 and residing in Ohio but who no longer work
21 on the bench?

22 A. Can you repeat that? Sorry,
23 you cut out a bit.

24 Q. Was any effort made to exclude
25 from the survey licensees who reside in Ohio

1 but no longer work on the bench as practicing
2 pharmacists?

3 A. The only thing we did was we --
4 I think we omitted pharmacist emeritus
5 status, so those are folks that are retired
6 but still maintain just sort of emeritus
7 license that doesn't allow them to practice.
8 But other than that, there was no effort to
9 separate those who are practicing from those
10 who weren't.

11 Q. So an individual who works as a
12 field leader, for example -- in the field but
13 not as a pharmacist, as long as they're
14 licensed and have an Ohio address on file
15 with the board, they were eligible to
16 complete the survey.

17 Is that correct?

18 A. Yes, and then that would be
19 reflected in the -- in the workplace
20 breakdowns that we did in the survey.

21 Q. Was any effort made, by the
22 way, to audit the responses on workplace --
23 on a workplace setting?

24 A. No.

25 Q. So you took the respondent's

1 word for it?

2 A. Yes.

3 Q. Was there any consideration
4 given to conducting the survey in a different
5 manner, i.e., other than in an electronic
6 manner?

7 A. No.

8 Q. No.

9 And did you consult any experts
10 about the manner in which you conducted the
11 survey, sending the e-mail link?

12 A. No.

13 Q. The report that we looked at
14 for the survey, the reports with the graphs
15 and all that --

16 A. Uh-huh.

17 Q. -- who prepared the report,
18 those reports?

19 A. I did.

20 Q. Who compiled the numbers?

21 A. I did.

22 Q. Did anyone audit or check that
23 you got the numbers right?

24 A. Yeah, I did it -- well, yes, so
25 I did my direct report was also -- she also

1 did a check to make sure.

2 Q. And how did you -- how did you
3 compile the numbers?

4 A. Well, we pulled them down from
5 the survey tool and then basically developed
6 the graphs and charts that way.

7 Q. You say you pulled down from
8 the survey tool, but did that give you -- did
9 that compile --

10 A. Yes, that gave us -- yeah, that
11 gave us the responses.

12 Q. What's the name of that tool?

13 A. It's a Microsoft -- I don't
14 know the name off the top of my head. It's
15 a -- it's a proprietary tool that the State
16 has. It's Business Intelligence, I think it
17 was. It's a Microsoft Business Intelligence
18 software.

19 Q. Okay. And the comments, the
20 anonymous comments --

21 A. Uh-huh.

22 Q. -- you don't know the
23 identities of any of the individuals who gave
24 those comments, correct?

25 A. No.

1 Q. You don't know which pharmacies
2 they worked at, correct?

3 A. No.

4 MR. ELSNER: Objection.

5 THE WITNESS: Well, unless they
6 identified themselves -- I mean,
7 identified that for me.

8 QUESTIONS BY MR. HYNES:

9 Q. Well, even if they identified
10 themselves as working for CVS, you don't know
11 which CVS Pharmacy they worked at, do you?

12 A. Correct.

13 Q. You don't know, for example, if
14 they work at a CVS in Montgomery County or a
15 CVS in Cuyahoga County, correct?

16 A. Yes, we wouldn't be able to
17 tell that from the survey data.

18 Q. Okay. And you haven't
19 validated any of the allegations or factual
20 assertions made in the comments, have you?

21 A. No.

22 Q. You were asked about the
23 composition of the workload advisory
24 committee.

25 Do you remember that?

1 A. Yes.

2 Q. Okay. And about the
3 composition -- and that the composition of
4 that committee is roughly half of the members
5 are from large chains.

6 Is that fair to say?

7 A. Yes.

8 Q. But, actually, a greater
9 percentage of the survey respondents were
10 from large chains, correct?

11 A. Yes.

12 Q. So would you agree that the --
13 that large chains are actually
14 underrepresented on the workload advisory
15 committee?

16 MR. ELSNER: Objection.

17 THE WITNESS: I mean, in terms
18 of the way we looked at it in terms of
19 representation was we wanted to make
20 sure that all aspects of the practice
21 of pharmacy were represented, while
22 also making sure we had a group that
23 was manageable.

24 So one of them we did defer to
25 the large chain settings, we still

1 wanted representation from
2 independents, long-term care,
3 hospitalists. So we -- you know, in
4 that sense, it was -- we felt it was
5 representative of the entire field of
6 pharmacy practice.

7 QUESTIONS BY MR. HYNES:

8 Q. So you feel that the
9 composition of the committee is
10 representative of the pharmacy practice in
11 Ohio?

12 A. Yes.

13 Q. Is that fair?

14 Okay. You mentioned, I think,
15 that the committee had concerns about
16 prescription volume because of COVID.

17 Do you remember saying that?

18 A. Yes.

19 MR. ELSNER: Objection.

20 THE WITNESS: In terms of the
21 dark hours.

22 QUESTIONS BY MR. HYNES:

23 Q. Yeah, can you explain what you
24 meant by the because of COVID?

25 A. Yeah. So the dark hours

1 actually emanated from a process that Kroger
2 utilized during COVID where they did shut
3 down for several hours, you know, to
4 outside -- to outside customers so they could
5 catch up on their work, and so that was being
6 discussed as a potential avenue to help
7 pharmacists who were, you know, underwater
8 get ahead, get start -- get prepared for the
9 day, as well close out and make sure
10 everything is being done correctly.

11 So that was -- that was -- that
12 was where the dark hours kind of emanated
13 from, they resulted from COVID. Or at least
14 the discussion resulted from something that
15 Kroger had done during COVID.

16 Q. Okay. The first -- both
17 surveys were done during COVID, correct?

18 A. Yes.

19 Q. The Board of Pharmacy -- the
20 Board of Pharmacy has not conducted a
21 workload -- did not conduct a workload survey
22 before COVID, correct?

23 A. No.

24 Q. Was any effort made in
25 designing the survey to account for the

1 effects of COVID?

2 A. The only question we asked is
3 about harassment, because we knew that -- at
4 least from the -- some early conversations we
5 had with the pharmacist -- {audio
6 interruption} -- we just -- some discussions
7 with field staff that, you know, people were
8 a little irate with pharmacists, you know,
9 not being able to get their medication in
10 time. So we did add some questions in the
11 '21 survey regarding, you know, harassment or
12 intimidation. But nothing specifically
13 related to COVID.

14 Q. Did the board consider asking
15 any questions about the impact of COVID on
16 staffing?

17 A. No.

18 Q. Some of the surveys that some
19 of the other -- some of the surveys that
20 other Boards of Pharmacy did ask about that,
21 right?

22 A. I'm not aware. You'll have to
23 ask them.

24 Q. Excuse me?

25 A. I said I'm not aware. You'll

1 have to ask them.

2 Q. Does the board have a position
3 on whether -- the board staff, excuse me,
4 have a position on whether COVID has had an
5 impact on pharmacy staffing in Ohio?

6 A. Yes, I think generally the
7 consensus is that it exacerbated an already
8 underlying issue.

9 Q. And how was that consensus
10 arrived at?

11 A. You know, internal discussions
12 with senior staff. We meet pretty regularly.

13 Q. Give me one second.

14 Can we just pull up Exhibit 15
15 real quick?

16 I can share my screen. There
17 it is. Thank you.

18 I just have a very quick
19 question, Mr. McNamee.

20 To the far right, Mr. Elsner
21 asked you about several of these columns in
22 here, correct?

23 A. Yes.

24 Q. Okay. The one on the far
25 right, I don't think you were asked about,

1 and it's titled "OPA."

2 Do you see that?

3 A. Yes.

4 Q. What does OPA stand for?

5 Is that the Ohio Pharmacists
6 Association?

7 A. Yes, that's correct.

8 Q. Okay. So that's the -- that
9 column gives the Ohio Pharmacists
10 Association's position on each of these
11 issues.

12 Is that fair?

13 A. Yes. Yes.

14 Q. You can take that down. Thank
15 you very much.

16 You mentioned that the -- I
17 think you testified that the workforce
18 advisory committee ended its work.

19 Is that correct?

20 A. Yes, the last meeting was in
21 June of this year.

22 Q. So June of 2022 it ended its
23 work.

24 A. Yes.

25 Q. Okay. Was the committee

1 disbanded?

2 A. Yes. I think formally the
3 board was -- they put it in resolution, we
4 haven't formally disbanded it, but the
5 communication out to the committee members is
6 that we've achieved our work. We've...

7 Q. Can we pull up Exhibit 17 real
8 quick?

9 Thank you.

10 If we go down to the next
11 page -- and thank you for doing this. Thank
12 you.

13 Mr. McNamee, do you remember
14 this document?

15 A. Yes.

16 Q. Okay. This was not prepared by
17 you, correct?

18 A. No.

19 Q. Okay. It was prepared by Jenni
20 Wai.

21 A. Yes.

22 Q. Okay. So the write-up under
23 slides 3 and 4, that was written by Jenni
24 Wai, not by you?

25 A. Yes, that was written by -- it

1 was compiled by her, yes.

2 Q. Thank you.

3 And can we go to Exhibit 20?

4 This is my last request on this for an
5 exhibit.

6 If we could just go to the
7 attachment.

8 The statistics here,
9 Mr. McNamee -- first of all, do you remember
10 this document?

11 A. Yes.

12 Q. Okay. This is Exhibit 20.

13 The statistics in here, were
14 they compiled by you?

15 A. They were provided to me by
16 Chad Garner, who is our director of OARRS,
17 but I compiled the document, yes.

18 Q. Got it.

19 Okay. But the numbers came
20 from Mr. Garner.

21 A. Yes, they would have to.

22 Q. All right. You can take that
23 down. Thank you.

24 This will be real quick. I'm
25 just going to show you two documents. I have

1 a couple of questions about them.

2 (McNamee Exhibit 21 marked for
3 identification.)

4 QUESTIONS BY MR. HYNES:

5 Q. We'll mark this -- where are we
6 at in terms of exhibit numbers?

7 GINA VELDMAN: Next one is 21.

8 MR. HYNES: Thank you.

9 QUESTIONS BY MR. HYNES:

10 Q. Mark this as 21.

11 Mike, I just sent a copy of
12 this to Amanda.

13 Mr. McNamee, can you see this
14 document?

15 A. Yes.

16 Q. And this is an e-mail from you,
17 correct?

18 A. Uh-huh.

19 Q. Okay. And it's to Andrea
20 Boxill and Richard Massatti.

21 A. Yes.

22 Q. And who they are?

23 A. Andrea Boxill was, at that
24 time, the director of governor's cabinet
25 opioid action team, and Rick Massatti was, at

1 the time, the state's substance -- the SOTA,
2 which is the state authority for -- to run
3 opioid treatment program. So he was also in
4 the medical director's office at the Ohio
5 Department of Mental Health and Addiction
6 Services.

7 Q. Okay. And this e-mail was sent
8 on August 24, 2016, correct?

9 A. Yes.

10 Q. Any reason to think you didn't
11 see this e-mail?

12 A. No.

13 Q. Was this sent in the ordinary
14 course of your work at the Ohio Board of
15 Pharmacy?

16 A. Yes.

17 Q. And is this document or this
18 e-mail maintained by the Ohio Board of
19 Pharmacy?

20 A. Yes.

21 Q. And does the subject matter of
22 the e-mail concern matters that you have
23 knowledge of?

24 A. Yes.

25 MR. ELSNER: Objection. Scope.

1 (McNamee Exhibit 22 marked for
2 identification.)

3 QUESTIONS BY MR. HYNES:

4 Q. And mark this as Exhibit 22.

5 Mr. McNamee, do you see
6 Exhibit 22?

7 A. Yes.

8 Q. And this is a 2017 annual
9 report of the Ohio Board of Pharmacy -- the
10 2017 annual report on the OARRS system,
11 correct?

12 A. Yes.

13 Q. Okay. And is this a document
14 that's prepared in the ordinary course of the
15 Board of Pharmacy's work?

16 A. Yes.

17 Q. Is it maintained by the Board
18 of Pharmacy in the regular course of
19 business?

20 A. Yes.

21 Q. And is it created by people who
22 have knowledge of the matters that are
23 discussed in the report?

24 A. Yes.

25 Q. Thank you.

1 MR. HYNES: Subject to recross,
2 I have no further questions.

3 MR. SCHEETZ: I can go next.

4 CROSS-EXAMINATION

5 QUESTIONS BY MR. SCHEETZ:

6 Q. Good afternoon, Mr. McNamee.
7 My name is Trevor Scheetz. I am a lawyer for
8 Meijer, and we appreciate you being here and
9 giving testimony today.

10 Forgive me, I'm getting over
11 whatever my kids are bringing home from
12 school now that we're back in person, but if
13 you ever can't hear me, please just raise
14 your hand or say something.

15 You have been asked several
16 questions today about workload surveys. I
17 have just a few more for you.

18 Is it fair to say that for the
19 2021 survey, about three out of four Ohio
20 pharmacists did not respond?

21 A. Yeah, the response rate, I
22 think, was around 20 percent.

23 Q. And when I say 2021, I mean,
24 the one that was published in '21 that was
25 taken in '20.

1 A. Oh, yes. Yes. That was around
2 25 percent, so, yeah.

3 Q. As you sit here today, are you
4 able to say with certainty whether a Meijer
5 pharmacist responded to that survey?

6 A. No, unless they mentioned it in
7 their freeform comments.

8 Q. Are you able to say how many
9 Meijer pharmacists, if any, responded to that
10 survey?

11 A. No.

12 Q. And assuming one or more Meijer
13 pharmacists did respond to that survey, do
14 you know whether they indicated they agreed
15 or disagreed with any particular statement in
16 the survey?

17 A. Again, we wouldn't be able to
18 know that.

19 Q. Turning to the 2022 survey, is
20 it fair to say about four in five Ohio
21 pharmacists did not respond to that survey?

22 A. Yes.

23 Q. And again, can you say with
24 certainty whether a Meijer pharmacist
25 responded to that survey?

1 A. No.

2 Q. Can you say with certainty how
3 many Meijer pharmacists, if any, responded to
4 that survey?

5 A. No.

6 Q. And assuming one or more Meijer
7 pharmacists did respond to that survey, do
8 you know whether they indicated that they
9 agreed or disagreed with any particular
10 statement in the survey?

11 A. I wouldn't know that.

12 Q. Did you say you would not know
13 that?

14 A. I would not know that, no.

15 Q. Okay. And if I could focus
16 your attention on the freeform comments you
17 talked about.

18 Counsel for Montgomery County
19 showed you several of those freeform comments
20 of the surveys.

21 Do you recall that?

22 A. Yes.

23 Q. None of those comments
24 mentioned Meijer, did they?

25 A. No, not that I'm aware.

1 MR. SCHEETZ: Okay. I have no
2 further questions. I want thank you
3 again for your time and for giving
4 testimony today. Thanks so much.

5 CROSS-EXAMINATION

6 QUESTIONS BY MR. HARRIS:

7 Q. I have just a few questions.

8 Hello, Mr. McNamee. My name is
9 Alex Harris, and I represent Walgreens.

10 First, briefly circling back to
11 a question that Mr. Hynes asked you, do you
12 recall his questions about your educational
13 background and what degrees you do and do not
14 have?

15 A. Yes.

16 Q. And one of the questions he
17 asked you is whether or not you hold a degree
18 or have any training in survey design.

19 Do you remember that?

20 A. Yes.

21 Q. And your answer to that was no,
22 correct?

23 A. Correct.

24 Q. Just two more questions and
25 then I'll be done.

1 Mr. McNamee, the board's
2 decision to survey and report pharmacists'
3 opinions regarding workplace conditions was a
4 voluntarily decision, correct?

5 A. Yes.

6 Q. There's no specific statutory
7 or other legal obligation to conduct a report
8 on such a survey, correct?

9 A. No.

10 MR. HARRIS: Thank you. That's
11 all I had.

12 MR. ELSNER: Any other defense
13 counsel wish to question?

14 No?

15 Why don't we go off the record
16 for less than five minutes, just
17 collect my notes, and we'll ask you a
18 few questions and be done.

19 VIDEOGRAPHER: The time right
20 now is 2:26 p.m. We're off the
21 record.

22 (Off the record at 2:26 p.m.)

23 VIDEOGRAPHER: The time right
24 now is 2:36 p.m. We're back on the
25 record.

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. ELSNER:

3 Q. Mr. McNamee, the surveys
4 conducted by the Ohio Board of Pharmacy and
5 the results of those surveys, can they all be
6 explained because of COVID?

7 Is that the reason that all the
8 pharmacists that responded to the survey
9 responded in the way that they did?

10 MR. HYNES: Objection. Form.

11 THE WITNESS: No, I mean, if
12 you look at some of the comments,
13 they do indicate, you know, the
14 cutting of hours prior to the
15 pandemic. And again, the pandemic
16 merely exacerbating underlying...

17 QUESTIONS BY MR. ELSNER:

18 Q. So if you understand your
19 testimony correctly, there was an underlying
20 problem, and that was exacerbated by COVID.

21 Is that your testimony?

22 MR. HYNES: Objection. Form.

23 THE WITNESS: That was with the
24 APhA survey, you know, it did indicate
25 that there were already existing

1 issues, and so certainly it's -- you
2 know, one could infer that COVID did
3 make things worse -- make an already
4 bad situation worse.

5 QUESTIONS BY MR. ELSNER:

6 Q. Right.

7 And we looked at that survey,
8 and the first survey disclosing those results
9 was in 2014, correct?

10 A. Yes.

11 Q. And the results there were
12 consistent with the results in 2019, and we
13 looked at that survey as well, correct?

14 A. Yes.

15 Q. Okay. And we also looked at
16 The Chicago Tribune article, that occurred
17 before COVID, is that true?

18 A. Yes.

19 Q. And there had been complaints
20 that were received by the Ohio Board of
21 Pharmacy prior to 2020 related to workforce
22 issues, metrics and staffing problems and the
23 impact on patient safety.

24 Is that true?

25 MR. SCHEETZ: Objection to

1 form.

2 THE WITNESS: Yeah, that's --
3 yes, that's as relayed to me by our
4 compliance and enforcement department.

5 QUESTIONS BY MR. ELSNER:

6 Q. Thank you.

7 Mr. Hynes asked you some
8 questions about how the survey was drafted
9 and was conducted.

10 During this period of time, you
11 shared the questions of the survey with
12 the -- with Mr. Wilt, who was the president
13 of -- or vice president of the Ohio Board of
14 Pharmacy, correct?

15 A. Yes.

16 MR. HYNES: Objection. Form.

17 QUESTIONS BY MR. ELSNER:

18 Q. And he worked at Meijer, a
19 defendant in this case, true?

20 A. Yes.

21 Q. And also serving at the board
22 of -- the Ohio Board of Pharmacy was
23 Ms. Jennifer Rudell who worked for CVS.

24 Is that right?

25 A. Yes.

1 Q. Okay. And then we looked --
2 and if we pull back up Exhibit 13, which is
3 MR 4212, we looked at the membership of the
4 pharmacists workload advisory committee, and
5 on that committee included representatives of
6 Walgreens, Walmart, CVS, Rite Aid and Kroger,
7 correct?

8 A. Yes.

9 Q. Was there any objection by any
10 of these individuals, the president or vice
11 president of the board or any member of the
12 board or any member of the pharmacists
13 workload advisory committee, to submitting
14 the first, second or third surveys that you
15 submitted?

16 A. No. In fact, the second set --
17 the second survey was at the request of
18 the -- {audio interruption}.

19 Q. The second survey was at the
20 request of who?

21 A. Was at the request of the
22 pharmacists workload advisory.

23 Q. Okay. So not only did they
24 appreciate the value of the survey responses
25 from the first survey, but the pharmacists

1 workload advisory committee, which was
2 comprised of employees Walgreens, Walmart,
3 CVS, Rite Aid and Kroger, advocated for a
4 second and third survey.

5 Is that true?

6 MR. HYNES: Objection. Form.

7 THE WITNESS: That was the
8 consensus of the committee of which
9 they are comprised, yes.

10 QUESTIONS BY MR. ELSNER:

11 Q. Okay. Thank you.

12 And you shared the results of
13 the first survey and the questions with the
14 governor of Ohio.

15 Is that right?

16 A. Yes.

17 Q. And did the governor's office
18 have any objection to the content of the
19 survey?

20 A. They had no -- no, they had no
21 concerns with the way we addressing the
22 issue, including the survey and the
23 committee.

24 Q. And you shared the results of
25 the survey with the governor's office.

1 Did they have any concerns
2 after the survey was conducted about the
3 manner in which it was conducted?

4 A. No.

5 Q. You also shared the results
6 with the NABP, the National Association for
7 the Board of Pharmacy, in a district meeting,
8 someone from your staff -- your office did.

9 Was there any objection from
10 the NABP to the survey and the way it was
11 conducted?

12 A. Not to my knowledge.

13 Q. Was there any objection from
14 outside experts that you consulted, the
15 professor from Ohio State University who you
16 had examine the survey questions?

17 MR. HYNES: Objection. Form.

18 THE WITNESS: Not that I can
19 recall.

20 QUESTIONS BY MR. ELSNER:

21 Q. Okay. And you didn't write
22 these questions all by yourself. You shared
23 the questions with members of the Ohio Board
24 of Pharmacy staff and sought their input.

25 Is that true?

1 MR. SCHEETZ: Objection.

2 Leading.

3 THE WITNESS: I did, yes,
4 including the board members --
5 including some of the board members.

6 QUESTIONS BY MR. ELSNER:

7 Q. Okay. So can you describe for
8 us who at the Ohio Board of Pharmacy you
9 shared the survey questions with?

10 A. Our chief pharmacist, Jenni
11 Wai. Our executive director, Steve
12 Schierholt. Shawn Wilt, who was the vice
13 president at the time. Jen Rudell, who was
14 the president at the time. Our director of
15 compliance and enforcement, Eric Griffin.

16 And that's who I can remember
17 off the top of my head.

18 Q. Before this deposition today,
19 has there been anyone that has criticized, to
20 your knowledge, the way that the Ohio Board
21 of Pharmacy conducted its three surveys
22 related to pharmacists' workload?

23 MR. HYNES: Objection. Form.

24 THE WITNESS: I did receive one
25 e-mail from John Long regarding some

1 of the wording of the questions.

2 QUESTIONS BY MR. ELSNER:

3 Q. And John Long is with CVS.

4 Is that right?

5 A. Yes, he indicated that he felt
6 like they were leading, I believe, is the --
7 was the feedback I -- the feedback I received
8 from him.

9 Q. And did you receive -- did he
10 object to the survey being sent out?

11 A. I don't think he objected to
12 the survey being sent out. I think he just
13 provided some feedback about the concerns
14 about the question -- about some of the
15 questions.

16 Q. Okay. And did you review and
17 consider those concerns?

18 A. We did; however, they were --
19 they were based on the 2022 survey, so for
20 the sake of consistency and being able to
21 compare responses, we felt keeping the
22 questions the same was -- would ultimately be
23 beneficial in analyzing the data.

24 Plus we didn't get any
25 responses back from anybody else about the --

1 about these questions, so, you know, it
2 wasn't -- it wasn't an overwhelming number --
3 the committee didn't sort of rise up and say
4 this is problematic. It was just one member.

5 Q. All right. So there were a few
6 concerns raised by the CVS designee to the
7 pharmacists workload advisory committee.

8 Were there any other objections
9 from any of the other members of the
10 committee or any other board members?

11 MR. HYNES: Objection. Form.

12 THE WITNESS: Not that I can
13 recall.

14 The only thing that's -- again,
15 the feedback that I believe Shawn
16 provided was just separating grocer
17 from standalone chains in order to
18 better sort of have -- to better
19 assess, you know, difference --
20 different pharmacy settings.

21 QUESTIONS BY MR. ELSNER:

22 Q. Mr. McNamee, what is the
23 overall goal that the board had in sending
24 out this pharmacist workload survey?

25 A. The overall goal was, one, to

1 assess where we are as a state, and, two,
2 depending on the responses, trying to come up
3 with some policy solutions to address these
4 issues.

5 Q. And what is the board's
6 assessment as to where the state of pharmacy
7 practice is with respect to large chain
8 pharmacies and large chain grocery stores in
9 the state of Ohio based on the survey
10 questions?

11 MR. HYNES: Form.

12 THE WITNESS: Well, I can speak
13 to the survey data, and the board
14 hasn't made a formal statement or a
15 formal assessment in open session.

16 What I can say is, you know,
17 they do recommend the issues presented
18 to the pharmacy community and have
19 begun sort of approving some changes
20 to try and alleviate those pressures
21 that are on the pharmacists currently.

22 QUESTIONS BY MR. ELSNER:

23 Q. And what's the purpose of
24 trying to alleviate some of those pressures
25 in the view of the Ohio State Board of

1 Pharmacy?

2 A. I mean, ultimately it comes
3 down to protecting patient safety and health.
4 Both from ensuring reduction -- you know,
5 preventing errors from happening, but also
6 ensuring timely access to medications.

7 MR. ELSNER: All right. Thank
8 you, Mr. McNamee.

9 THE WITNESS: Thank you.

10 MR. HYNES: I have some -- some
11 questions, but I'm happy to allow
12 someone else to go first.

13 RECROSS-EXAMINATION

14 QUESTIONS BY MR. HYNES:

15 Q. Okay. Mr. McNamee, just a few
16 questions and we'll let you go. I know
17 it's -- probably some other stuff.

18 Would you agree it's hard to
19 measure the impact of COVID when you didn't
20 ask about it in the survey?

21 MR. ELSNER: Objection.

22 THE WITNESS: I -- in my
23 personal opinion, you know, I think
24 it was a factor in the responses, for
25 sure.

1 But, again, I don't think it
2 was -- it was the -- in its totality
3 the only reason why folks are not
4 happy with their workplace
5 environments and their stress levels.

6 QUESTIONS BY MR. HYNES:

7 Q. All right, but you can't
8 quantify the impact, can you?

9 MR. ELSNER: Objection.

10 THE WITNESS: No.

11 QUESTIONS BY MR. HYNES:

12 Q. For example, you could have
13 asked the pharmacists whether COVID had an
14 impact on workload and staffing, correct?

15 A. Yes; although I think that
16 was -- yes, we could have.

17 Q. Right.

18 And then you could have seen
19 how many -- what percentage of the
20 respondents answered yes to that question,
21 correct?

22 A. Potentially, yes.

23 Q. And you could have even asked
24 whether there were -- whether there were
25 concerns with workload and staffing before

1 COVID?

2 A. That could have been a
3 possibility, yes.

4 Q. Okay. You didn't ask those
5 questions in the surveys?

6 A. No.

7 Q. Okay. Mr. Elsner asked whether
8 you had shared the survey questions with
9 various individuals before they were sent
10 out.

11 Do you remember that?

12 A. Yes.

13 Q. He asked whether you shared
14 them with Mr. Wilt and Ms. Rudell, correct?

15 A. Yes.

16 Q. To your knowledge, do either of
17 them have any training or expertise in survey
18 design?

19 A. No.

20 Q. Okay. He asked whether you
21 shared them -- shared the questions with some
22 of the BOP staff, and you said yes, correct?

23 A. Yes.

24 Q. Any of the individuals you
25 shared the questions with, do they have any

1 training or expertise in survey design?

2 A. No.

3 Q. He asked whether you shared the
4 questions for the second survey in advance
5 with members of the workload advisory
6 committee, correct?

7 A. Yes.

8 Q. Do any of them have any
9 training or expertise in survey design?

10 A. I do not believe so.

11 Q. Okay. He asked about you
12 sharing the questions in advance with the
13 governor's office, correct?

14 A. Yes.

15 Q. To the best of your knowledge,
16 does anyone in the governor's office who you
17 shared the questions have any training or
18 expertise in survey design?

19 A. To the best of my knowledge,
20 no.

21 Q. Okay. And then he asked you
22 about whether you shared the questions in
23 advance with anyone at NABP.

24 Do you remember that?

25 A. Yes.

1 Q. And to the best of your
2 knowledge, does anyone at NABP who you shared
3 the questions with have any training or
4 expertise in survey design?

5 MR. ELSNER: Objection.

6 THE WITNESS: Not that I'm
7 aware.

8 QUESTIONS BY MR. HYNES:

9 Q. Okay. Of all of those
10 individuals that -- of all of those
11 individuals or categories of folks that we
12 discussed, did any of them actually give you
13 comments or edits to the questions?

14 A. The edits were -- again, we
15 were working off of the Missouri survey as
16 sort of the basis, so the edits were not very
17 substantial from what we initially circulated
18 via -- as an initial draft.

19 Q. Okay. So did anyone from the
20 governor's office give you comments or edits?

21 A. No.

22 Q. Anyone from NABP give you
23 comments or edits?

24 A. No.

25 Q. Anyone besides Mr. Long on the

1 workload advisory committee give you comments
2 or edits?

3 A. Not that I can recall.

4 Q. Mr. Wilt or Mr. Bell give you
5 comments or edits?

6 A. Mr. Wilt did.

7 Q. And, excuse me, who was the
8 person at Ohio State, professor?

9 A. Donnie Sullivan.

10 Q. Sullivan?

11 A. Yeah.

12 Q. Okay. And, again, he's a
13 professor in pharmacy?

14 A. Yes.

15 Q. You're aware that Ohio State
16 has a department that is -- it's specifically
17 focused on survey design.

18 A. Yes.

19 Q. It's called the CHRR.

20 Is that right?

21 A. That's -- I wouldn't know
22 specifically, no.

23 Q. Okay. But you didn't reach out
24 to these -- to that department about how to
25 conduct or design a survey?

1 A. No.

2 Q. Okay. And, again, no other
3 third parties who were experts in survey
4 design were consulted in designing or
5 conducting the survey, correct?

6 A. No.

7 MR. HYNES: No further
8 questions.

9 RE CROSS-EXAMINATION
10 QUESTIONS BY MR. SCHEETZ:

11 Q. Just very quickly for Meijer.

12 Mr. McNamee, you testified that
13 Mr. Wilt, Shawn Wilt, gave you some feedback
14 on the survey questions you shared.

15 A. Yeah.

16 Q. I think you also told
17 Mr. Elsner that the feedback he gave you was
18 related to the suggestion to break out
19 grocery from standalone pharmacy.

20 Did I hear that correctly?

21 A. Yes.

22 Q. Were there any other comments
23 or edits from Mr. Wilt that you can recall?

24 A. Not that I recall, no.

25 MR. SCHEETZ: All right. Thank

1 you again for your time. I appreciate
2 it.

3 THE WITNESS: Sure.

4 MR. HARRIS: Nothing further
5 from me.

6 MR. SHERE: Nothing -- no
7 questions from Kroger.

8 MR. HYNES: Thank you again for
9 your time.

10 MR. ELSNER: Hey, I have just
11 two housekeeping matters.

12 First, if we could mark the
13 demonstratives that I used in my
14 examination as Exhibit 23, which
15 depicted the math that was shown to
16 the witness. I would like to do that,
17 if we could.

18 (McNamee Exhibit 23 marked for
19 identification.)

20 FURTHER REDIRECT EXAMINATION

21 QUESTIONS BY MR. ELSNER:

22 Q. Just one follow-up question.

23 Mr. McNamee, the results of the
24 survey were published on the Ohio Board of
25 Pharmacy's website as you testified.

1 Is that right?

2 A. Yes.

3 Q. Is it the expectation of the
4 Board of Pharmacy that pharmacies, chain
5 pharmacies and grocery store pharmacies,
6 would review the results of the survey and
7 take appropriate action?

8 MR. HYNES: Objection.

9 Are you going re-redirect here?

10 MR. ELSNER: It sounds like
11 what you were able to do in CT3.

12 MR. HYNES: I don't think so.

13 MR. ELSNER: It will be my only
14 question.

15 QUESTIONS BY MR. ELSNER:

16 Q. Go ahead, Mr. McNamee.

17 A. I don't think that -- I mean,
18 that was obviously -- that wasn't the primary
19 goal. Obviously the primary goal was to, you
20 know, develop policy recommendations to
21 address these issues. I don't think we were
22 under any illusion that it was going to
23 change behavior.

24 MR. ELSNER: Thank you,
25 Mr. McNamee.

1 MR. SCHEETZ: Before we go off
2 the record, we'll reserve all
3 objections to the demonstrative, but
4 let's put them in the record so we
5 have them.

6 MR. HYNES: And, Mike, can you
7 send us that e-mail that he looked at
8 before the deposition?

9 MR. ELSNER: Yeah, I'm going to
10 talk with counsel for the Board of
11 Pharmacy about that because it's
12 unclear to me -- I didn't communicate
13 with the witness, so I don't know what
14 the witness was shown and what the
15 witness wasn't shown. So let me have
16 that communication, and then we'll
17 respond to you.

18 MR. HYNES: Well, I think I --

19 MR. APPEL: I can represent
20 that to you because I was the one that
21 communicated. You forwarded documents
22 saying that you were, at the hearing,
23 going to be identifying certain
24 documents in order to -- you know,
25 that one of the -- you had like five,

1 six purposes of having the
2 deposition -- you know, having this
3 30(b)(6) witness. One -- you know,
4 workplace survey was a big one, but
5 you also said you wanted someone to be
6 able to identify documents, and you
7 had identified some specific
8 documents. So we wanted to make sure
9 that Mr. McNamee could come here and
10 tell you, yes, these are true and
11 accurate copies of documents
12 maintained by the State of Ohio Board
13 of Pharmacy.

14 So they -- I don't believe
15 there was anything that wasn't -- that
16 he wasn't asked about specifically.
17 And the purpose of doing this was to
18 make sure that he was aware of
19 documents that he would need to
20 authenticate in case there was
21 anything that he didn't know offhand
22 that he would be able to communicate
23 with some other -- with some third
24 party to -- you know, someone else at
25 the board to make sure that they're

1 right so we wouldn't have to have
2 someone else come and do another
3 deposition.

4 MR. HYNES: Right. And it's
5 not privileged.

6 MR. APPEL: No, nothing
7 privileged. It was all stuff that was
8 provided by the Board of Pharmacy, and
9 I -- I'm like 99 percent certain
10 everything had been provided by the
11 Board of Pharmacy and had the BOP
12 stamps in the bottom right-hand
13 corner, so they were already submitted
14 in the MDL.

15 And I'm pretty sure -- I will
16 say that I do not keep a tremendous
17 detailed list on everything that was
18 asked and not and which documents were
19 reviewed, but I -- my sense was that
20 all of them were identified -- were
21 shown to Mr. McNamee during the
22 hearing today -- or deposition today,
23 so he could identify them for your
24 proceedings going forward.

25 MR. HYNES: Okay. Thanks for

1 the explanation.

2 MR. ELSNER: Thank you very
3 much.

4 MR. APPEL: Mr. McNamee will
5 read.

6 VIDEOGRAPHER: The time right
7 now is 2:56 p.m. We're off the
8 record.

9 (Deposition concluded at 2:56 p.m.)

10 COURT REPORTER: Does anyone
11 need a copy of the transcript?

12 MR. HYNES: CVS does, please.

13 MS. OCHMAN: Walmart, a final
14 draft only, please.

15 MR. SHERE: For Kroger, final
16 draft condensed with exhibits.

17 MS. OCHMAN: With exhibits,
18 too, for Walmart.

19 MR. SCHEETZ: And I'll talk to
20 my Meijer colleagues but nothing right
21 now. Thank you.

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CERTIFICATE

I, CARRIE A. CAMPBELL, Registered
Diplomate Reporter, Certified Realtime
Reporter and Certified Shorthand Reporter, do
hereby certify that prior to the commencement
of the examination, Cameron McNamee, was duly
sworn by me to testify to the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the
foregoing is a verbatim transcript of the
testimony as taken stenographically by and
before me at the time, place and on the date
hereinbefore set forth, to the best of my
ability.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor attorney
nor counsel of any of the parties to this
action, and that I am neither a relative nor
employee of such attorney or counsel, and
that I am not financially interested in the
action.

CARRIE A. CAMPBELL,
NCRA Registered Diplomate Reporter
Certified Realtime Reporter
California Certified Shorthand
Reporter #13921
Missouri Certified Court Reporter #859
Illinois Certified Shorthand Reporter
#084-004229
Texas Certified Shorthand Reporter #9328
Kansas Certified Court Reporter #1715
New Jersey Certified Court Reporter
#30XI00242600
Louisiana Certified Court Reporter
#2021012
Notary Public

1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it. You are signing
10 same subject to the changes you have noted on
11 the errata sheet, which will be attached to
12 your deposition.

13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.

ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the foregoing
pages and that the same is a correct
transcription of the answers given by me to
the questions therein propounded, except for
the corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

Cameron McNamee

DATE

Subscribed and sworn to before me this
_____ day of _____, 20 ____.

My commission expires: _____

Notary Public

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